

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

1	UNITED STATES OF AMERICA)	
2)	
3	Plaintiff,)	CRIMINAL ACTION FILE
4)	NO. 1:06-CR-147-WSD
5	v.)	
6)	ATLANTA, GEORGIA
7	SYED HARIS AHMED (1) AND)	
8	EHSANUL ISLAM SADEQUEE (2))	
9)	
10	Defendants.)	
11	_____)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,
UNITED STATES DISTRICT JUDGE

Wednesday, May 20, 2009

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Wednesday Morning Session

May 20, 2009

10:58 a.m.

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P R O C E E D I N G S

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(In open court:)

(In open court:)

THE COURT: Good morning. This is the *Daubert* hearing in the United States v. Syed Haris Ahmed and United States v. Eshanul Islam Sadequee, which is Criminal Action No. 06-147.

Would counsel please announce their appearances?

MS. COLLINS: Alexis Collins for the United States, and sitting with me is Robert McBurney and Christopher Bly.

THE COURT: Good morning.

MR. MARTIN: Jack Martin on behalf of Mr. Ahmed.

THE COURT: Good morning.

And good morning, Mr. Ahmed.

DEFENDANT AHMED: Good morning.

MR. SAMUEL: Don Samuel for Mr. Sadequee.

MR. WAHID: Khurrum Wahid for Mr. Sadequee.

THE COURT: Good morning.

And good morning, Mr. Sadequee.

All right. This is the hearing concerning

1 Mr. Kohlmann. Is the government ready to proceed?

2 MS. COLLINS: Yes, Your Honor.

3 Before we proceed, the government wanted to ask --
4 and we have already talked with defense counsel for
5 Mr. Ahmed -- just like with Dr. Ofshe yesterday, his
6 testimony was considered part of the trial testimony.

7 For purposes of Mr. Kohlmann's qualifications and
8 methodology as well as any cross, we were wondering if that
9 would be possible with respect to Mr. Ahmed's trial since
10 that would be before Your Honor?

11 THE COURT: Mr. Martin, do you have any objection
12 to that?

13 MR. MARTIN: We are agreeable to that.

14 THE COURT: Then I will consider that in connection
15 with Mr. Ahmed's trial.

16 MS. COLLINS: Thank you, Your Honor. Then we would
17 begin by calling Mr. Kohlmann to the stand.

18 -- -- --

19 EVAN F. KOHLMANN

20 being first duly sworn by the Courtroom Deputy, testifies and
21 says as follows:

22 -- -- --

23 DIRECT EXAMINATION

24 BY MS. COLLINS:

25 Q. Good morning, Mr. Kohlmann.

1 A. Good morning.

2 Q. What is it that you do?

3 A. I work as an international terrorism consultant.

4 Q. And can you summarize very briefly the subject matter of
5 your work?

6 A. Yes. I collect open source information, research about
7 terrorist organizations, terrorist movements, terrorist
8 financing, terrorist recruitment, and terrorist propaganda.

9 I take that information and distill it into either
10 unclassified open source memorandum for the purposes of law
11 enforcement, academics and others, or I distill it in the
12 form of academic papers, books and other materials, including
13 advice to Congress or whoever else has a need or a want for
14 this kind of information.

15 Q. And do you focus -- what types of groups or specific
16 individuals do you focus on?

17 A. Well, I focus, generally speaking, on the Arab Afghan
18 movement and organizations that have links to the Arab Afghan
19 movement. By Arab Afghans, I'm referring to Arab Mujahideen
20 or holy warrior fighters who came to Afghanistan during the
21 1980s to fight there.

22 But that conflict extends beyond Afghanistan. My honors
23 thesis at Georgetown focused on the transnational aspect of
24 this, how these organizations moved on from Afghanistan to
25 other conflict zones, and how they internetwork with each

1 other. So this is a key aspect of what I do.

2 Q. And just for the court reporter, you mentioned a word
3 Mujahideen. Could you spell that, please?

4 A. Of course, excuse me. M-u-j-a-h-i-d-e-e-n.

5 Q. And what does that word mean?

6 A. It means, roughly translated in Arabic, holy warriors.

7 Q. And --

8 A. It comes from the root word jihad, which means holy
9 struggle.

10 MS. COLLINS: I approach the witness, Your Honor?

11 THE COURT: You may.

12 BY MS. COLLINS:

13 Q. I just put before you what has been marked as
14 Government's Exhibit 2.

15 Do you recognize that?

16 A. Yes, I do.

17 Q. What is it?

18 A. This is a copy of my resume'.

19 MS. COLLINS: Your Honor, at this time we would
20 move to admit Government's Exhibit 2.

21 THE COURT: Any objection?

22 MR. MARTIN: No objection.

23 MR. SAMUEL: No objection.

24 THE COURT: Okay. It's admitted.

25 BY MS. COLLINS:

1 Q. Now, you mentioned your undergraduate studies. Where
2 did you do those?

3 A. I was student at the Edmund A. Walsh School of Foreign
4 Service at Georgetown University in Washington, D.C.

5 Q. And what was your degree and major?

6 A. My degree was in International Politics with a focus on
7 International Security Studies. I also achieved a
8 certificate in Islam and Muslim Christian Understanding from
9 the Prince Al-Waleed Bin Talal Center for Muslim Christian
10 Understanding.

11 Q. And what do you mean by international security studies?

12 A. International security studies, focusing on war and
13 peace in the contemporary world. But my particular focus was
14 on the Middle East and the Muslim world.

15 Much of my research focused on Afghanistan, the Arabian
16 Gulf, also known as the Persian Gulf, North Africa. But
17 again focusing on radical or extremist or dissident movements
18 in general that had appeared in the Middle East in the Muslim
19 world during the 1980s and 1990s.

20 Q. Now, you mentioned earlier your honors thesis that
21 related to the Arab Afghan movement.

22 A. That's correct.

23 Q. Can you explain a little more, just briefly, what issue
24 about the Arab Afghan movement you were discussing in that
25 paper?

1 A. Yes. I had sought to compare four different Arab Afghan
2 movements following the end of the Soviet Afghan War of the
3 1980s, and trying to examine, even though these individuals
4 had come from similar base, they had all fought in
5 Afghanistan or they had links back to fighters in
6 Afghanistan, why upon returning to their countries of origin,
7 namely, Egypt, Saudia Arabia, the Caucasus and Algeria, why
8 is it that these individuals followed different paths, why is
9 it that they achieved different relative degrees of success,
10 and trying to understand what factors allowed Arab Afghan
11 movements to succeed or fail in a given region, in a given
12 country, or following a given path.

13 Q. And what time period did that cover?

14 A. Well, covering the beginning of the paper the Soviet
15 Afghan War of the 1980s. I wanted to first of all show the
16 establishment of the Arab Afghan movement, of the
17 Makhtab-e-Khidamat, the office of Mujahideen services, and
18 then tracing that up until about -- my honor thesis was
19 published in April of 2001, so it was covering the period up
20 until April of 2001.

21 Q. And did any of those groups you mentioned, the
22 Makhtab-e-Khidamat, did any of those have any relation to
23 later groups that turned out to be terrorist organizations?

24 A. Yes. I mean, one of the initial figures in the chapter,
25 the initial introductory chapter to my thesis was

1 Osama Bin Laden, the founder of Al-Qaeda. And of course, the
2 Makhtab-e-Khidamat has actually been designated by the
3 United States government as being the predecessor
4 organization of Al-Qaeda.

5 Q. Now, while you were at Georgetown, did you write any
6 other major papers that are related to your current field?

7 A. Yes.

8 Q. And can you talk about how many did you write, other
9 than your honors thesis?

10 A. First of all, in order to get a certificate in Islam and
11 Muslim Christian Understanding, I had to write what's known
12 as a capstone thesis.

13 A capstone thesis is a thesis paper where you meet with
14 your mentor at the CMCU, Center for Muslim Christian
15 Understanding, and you pick a paper topic. In my case, my
16 paper topic was Religious and Political Modernization in
17 Early Twentieth Century Afghanistan, trying to examine how
18 some of the same political currents that are in Afghanistan
19 now can be traced all the way back to the early 20th
20 century.

21 And my mentor in that project was the director of the
22 center, Dr. John Voll -- or excuse me, the deputy director of
23 the center, Dr. John Voll.

24 Q. As part of your study at the Center for Muslim Christian
25 Understanding, did you have to undertake any special studies?

1 A. Yes. In addition to writing my capstone thesis, I also
2 had to take a year-long intensive study in Islamic history
3 and Islamic ideology and Islamic thought, which included
4 memorization of lots of Arabic terminology, which is
5 essential to understanding Islam.

6 I also had to take course work in Islamic modernism to
7 understand how different individuals had tried pushing
8 forward modern views of Islam in the contemporary world and
9 the struggles that they have faced and what experiences they
10 had. So, yes.

11 Now, in addition I should say I wrote one other paper of
12 significance while I was at Georgetown. I set up an
13 independent research seminar with a senior member of the
14 Department of Government Faculty, Dr. Andrew Bennett.

15 And the purpose of doing that was in order to engage in
16 an indepth study of the Soviet Afghan War of the 1980 itself,
17 and trying to understand how that conflict had eventually led
18 to the development of the Taliban, the Taliban meaning the
19 students movement that's currently fighting in Afghanistan
20 during the 1990s.

21 Q. Now, in the course of -- in writing those three papers
22 that you talked about, your honors thesis on Arab Afghans,
23 the paper that you did for the Center for Muslim Christian
24 Understanding, and the other thesis that you wrote, what
25 types of sources did you use when you were researching those?

1 A. I focus, then and now both, I focus on open sources.

2 Q. And just can you explain what that means? What is open
3 source?

4 A. Open sources are nonclassified sources.

5 In other words, a closed source would be an intelligence
6 report, it would be a spy report. I don't deal with that
7 kind of information.

8 What I deal is in terms of getting as original
9 information as possible but from open sources; i.e., number
10 one, going out and interviewing people directly in the field,
11 going and speaking with people.

12 Now, in the world of terrorism, that can be very
13 challenging. Most terrorists aren't exactly looking to meet
14 with Americans.

15 So I move to what are known as secondary sources, which
16 would be original video recordings, original audio
17 recordings, books, magazines written by the individuals who I
18 am writing about.

19 So in other words, I probably can't get an interview
20 with Osama Bin Laden personally in Afghanistan; however, I am
21 able to get my hands on video recordings of Osama Bin Laden
22 speaking at a time.

23 I am able to get my hands on books written by his
24 intimate associates as they were forming Al-Qaeda during the
25 late 1980s and early 1990s.

1 I'm able to get my hands on original communiques issued
2 by terrorist organizations. For instance, the Armed Islamic
3 Group in Algeria.

4 These sources are not as good as meeting someone in the
5 field, but certainly if you have a video recording of someone
6 saying something, it's fairly certain that they did say it,
7 and that's a very, very powerful and a very useful source.

8 So those are the main sources I use.

9 Now, I also supplement those with what are known as
10 tertiary sources. Tertiary sources would be newspaper
11 articles, magazine articles.

12 Now, these are the kind of sources that we don't
13 generally like to use, because it's hard to know for sure,
14 you know, how accurate journalists are.

15 However, certain publications, *The New York Times*, for
16 instance, has an extremely good reputation, and if they quote
17 somebody as saying something, it's fairly certain that they
18 said it. They have a very good editorial process.

19 So those kind of tertiary sources can also be relevant
20 to help flesh out more detail about the subject that you are
21 writing about. But again the best sources would be the
22 primary and the secondary sources.

23 Q. Okay. And we will talk more about how you obtain access
24 to those sources later.

25 What -- for these papers that you wrote, was there any

1 type of approval or review process at the school?

2 A. Yes.

3 Q. Can you describe that process?

4 A. Yes, of course. For my honors thesis -- the honors
5 thesis is somewhat of an involved process. Georgetown
6 doesn't offer the opportunity to all students to write an
7 honors thesis. It's something you have to apply for.

8 In order to apply for it, you have to have a topic which
9 you are already interested in writing about, which is unique,
10 and which pushes forward social service in some way which
11 makes it worthwhile for you to write the paper.

12 I applied to the Department of Government, and I was
13 selected with about four other students from my class to
14 write honors theses for the Department of Government.

15 Now, in order to write the thesis itself, even after
16 being selected to do it, I then had to engage in a full
17 semester-long course taught by the director of the Department
18 of Government, Dr. Joseph Lepgold, L-e-p-g-o-l-d, who over
19 the space of a semester intensively showed us the proper
20 methods for research and writing for thesis documents, for
21 thesis papers.

22 Number one, how to conduct good research, how to
23 evaluate good sources, how to write properly, how to do
24 proper comparative analysis.

25 Once the course itself was over, then we were expected

1 to write the thesis. However, throughout the writing of the
2 thesis, obviously I was working very closely with
3 Dr. Lepgold, my advisor, and also Dr. Michael Brown, who was
4 the the director of Georgetown's National Security Program at
5 the time, who was also helping me mentor this project.

6 Once I finished the paper and once I submitted the
7 paper, the process is still not over. Because at that point
8 the paper goes in front of a committee of senior faculty
9 members from the Department of Government at Georgetown
10 University.

11 They as a committee then vote on whether the paper has
12 achieved what it is supposed to have achieved, it is quality
13 enough, it is level enough to achieve honors.

14 If it is approved, you receive honors. Mine was
15 approved.

16 Q. Now, while you were at Georgetown, did you end up
17 working for any professors?

18 A. Yes.

19 Q. And who?

20 A. I worked as a research assistant for Dr. Mamoun Fandy,
21 M-a-m-o-u-n F-a-n-d-y, at the Center for Contemporary Arab
22 Studies, CCAS, at Georgetown University.

23 Q. What type of work did you do for Dr. Fandy?

24 A. Dr. Fandy was at that point putting the final touches on
25 his book *Saudi Arabia: Politics of Dissent*.

1 In his class work that I was doing with him separately,
2 I was doing a lot of work on the Saudi dissident groups that
3 he was writing about, including Osama Bin Laden, and that was
4 also the focus of some of the research I was doing for him
5 was helping him research those topics, research those
6 individuals, and other aspects that were going into his
7 work.

8 But, yeah, I mean, I was working as his research
9 assistant.

10 Q. Looking at your resume', you also attended University of
11 Pennsylvania Law School?

12 A. That's correct, yes.

13 Q. While you were there, did you continue to study or deal
14 with issues in international terrorism?

15 A. Yes.

16 Q. In what way?

17 A. Well, in law school, first of all, I took course work
18 that specifically was directed in the aim of terrorism and
19 national security law: Cybercrime, terrorism and diplomacy,
20 terrorism and democracy. I was focusing very heavily on
21 national security law.

22 But separately from that, in the Graduate School of Arts
23 and Sciences at the University of Pennsylvania, I also did
24 course work in Afghanistan Islamism.

25 Q. Did you write any papers that were related to issues of

1 national terrorism there?

2 A. Yes. In addition to the papers that I wrote for my law
3 school classes and in order to get credit for the class in
4 Afghanistan and Islamism, I was required to write a
5 full-length term paper in which I compared
6 Gulbuddin Hekmatyar and Ahmad Shah Masood --
7 G-u-l-b-u-d-d-i-n H-e-k-m-a-t-y-a-r, and Ahmad Shah Masood,
8 A-h-m-a-d S-h-a-h M-a-s-o-o-d -- two Afghan war lords,
9 comparing and contrasting their histories, their backgrounds,
10 and how they had contributed to the history and development
11 of Afghanistan.

12 Q. Now, while you were in school, did you also do any
13 outside work?

14 A. Yes, I did.

15 Q. And for what entity?

16 A. I worked starting in February of 1998 for the
17 Investigative Project, which is a Washington, D.C., based
18 think tank and policy group.

19 Q. Now, is that a nonprofit or for-profit organization?

20 A. It's a nonprofit organization.

21 Q. And what is the purpose of the Investigative Project?

22 A. The Investigative Project was founded in 1995 in order
23 to help promote nonprofit counterterrorism research. In
24 other words, in order to help promote the idea of going in
25 and doing a lot of ground-level research on terrorist

1 organizations, terrorist financing, terrorist recruitment
2 that other people didn't have the time or resources to
3 dedicate to this process.

4 And the idea was that we would then take our results,
5 the research that we had gotten, again distill it into
6 memorandum, and then distribute these memorandum to
7 journalists, to congressmen, to law enforcement, anyone that
8 this information could be useful to.

9 Now, naturally everything that we did was very
10 heavily-researched based. So in addition to giving the
11 actual memorandum, we would carefully footnote everything and
12 also give original sources as well.

13 So if a journalist was writing a story about a bank
14 account, we would be able to show here is the bank account,
15 here is the transfer, here is something. Everything we did
16 was very carefully backed up with documentary evidence.

17 Q. And you talked about everything we did. What were your
18 duties when you were working there?

19 A. My specific responsibility there was tracking Al-Qaeda
20 and Arab Afghan organizations. But in order to do that,
21 I covered a wide variety of different aspects, everything
22 from fund raising, recruitment, propaganda.

23 I also branched into several other organizations which
24 the investigative project focused on including Hamas. But
25 again the main focus of my research was on Arab Afghan

1 movements.

2 Q. And what would be some examples Arab Afghan movements
3 that you focused on at that time?

4 A. Primarily, of course, Al-Qaeda starting in August of
5 1998 with the bombing of the U.S. embassies in East Africa.

6 But aside from just Al-Qaeda itself, there were other
7 organizations as well, such as the Libyan Islamic fighting
8 group, such as the Egyptian Islamic group, such as the
9 Islamic Jihad movement in Egypt.

10 There are a bunch of other organizations that either
11 work underneath Al-Qaeda's umbrella or else simply have the
12 same ideas or similar ideas as Al-Qaeda but separate. So you
13 have to study all of these organizations to understand how
14 they interact and how they work.

15 Q. Now, what was the -- would you actually produce work
16 product yourself from the research that you were doing?

17 A. Yes.

18 Q. And what was the vetting or review process for that work
19 product?

20 A. Well, anything that gets put out -- in the investigative
21 project, anything that was written, number one, had to be
22 reviewed by basically every other staff member, including the
23 director of the organization. Nothing left that organization
24 without being proofread at least five or six different times
25 by five or six different people.

1 The reason being is because of the fact that you are
2 dealing with issues of terror finance, recruitment. These
3 are very serious criminal issues. We didn't want to accuse
4 anyone of doing anything that they weren't actually
5 responsible for, and we wanted to make sure that if we were
6 making a particular allegation, that there were sufficient
7 facts to back that up.

8 So everything had to be very carefully footnoted. And
9 again, since most of what we were doing ended up in the form
10 of congressional testimonies and whatnot, for obvious
11 reasons, everything, all the Ts had to be crossed, all the Is
12 had to be dotted.

13 Q. Now, how long did you work for the Investigative
14 Project?

15 A. I worked at the Investigative Project from again
16 approximately February of 1998 until January of 2004.

17 Q. What did you do after you left the investigative
18 project?

19 A. After I left the investigative project -- well,
20 I finished my law degree, but I also began my own consulting
21 business, providing similar services to what I did at the
22 Investigative Project, however now open to a wide variety of
23 clients.

24 Q. And has the focus of your research changed at all since
25 you left the Investigative Project and entered into your own

1 consulting business?

2 A. I don't think it's changed. I think it's expanded
3 slightly only because of the fact that we have had new
4 frontiers of research open up in places like Iraq that didn't
5 exist previously, so those areas achieved greater
6 significance in my research. But the research itself is the
7 exact same.

8 Q. Do you also work in relation to your consulting work on
9 groups in Pakistan?

10 A. Very heavily.

11 Q. And what would be some examples of those groups that you
12 studied?

13 A. Lashkar-e-Tayyiba, Jaish-e-Mohammed, J-a-i-s-h dash e
14 dash M-o-h-a-m-m-e-d, the Tehrik-e-Taliban Pakistan,
15 T-e-h-r-i-k dash e dash Taliban Pakistan. Sipah-e-Sahaba.

16 I study a large group -- large number of groups in
17 Pakistan. I work with a colleague who is there right now.

18 Q. Now, what types of clients do you consult for as part of
19 your business?

20 A. Well, I consult for almost anyone who is interested in
21 my research. I provide information to wide variety of
22 different people, everything from academics, government
23 agencies, law enforcement, human rights organizations,
24 journalists, academic institutions.

25 Really, the idea is -- I mean, it's stated in my

1 website. The idea is to provide an information clearinghouse
2 for people involved in very detailed counterterrorism
3 research. Policymakers, law enforcement, academics, human
4 rights activists, whoever is interested in this stuff, I'm
5 more than happy to give my research to.

6 Q. Now, you just mentioned your website. What is the name
7 your website?

8 A. My website is located at *www.globalterroralert.com*.

9 Q. And you said you use it as clearinghouse for what?

10 A. What I do is, number one, my own papers, the papers that
11 I write. For instance, I recently published a paper about a
12 group in Somalia. I will post links on the site itself so
13 people have access to my analysis.

14 But more importantly what I do there is I provide
15 examples of raw information from terrorist
16 organizations. Now, obviously this has been selectively
17 chosen for information that I believe would be helpful to
18 people involved in counterterrorism research.

19 But it is information, raw information that helps
20 academics, policymakers, law enforcement, anyone else
21 understand the mechanics of what's going on on the ground.

22 It's one thing to hear about drone strikes, it's one
23 thing to hear about bombings. It's another thing to see
24 this, and see the actual people involved, and see the
25 details. And that's what we provide.

1 Q. Now, you mention that you do some consulting for
2 government agencies. Are these foreign or U.S. government
3 agencies?

4 A. Both.

5 Q. And can you just -- can you mention some of the U.S.
6 government entities that you have consulted for?

7 A. Sure, of course. The Federal Bureau of Investigation,
8 the U.S. Department of Justice, the U.S. Department of State,
9 the U.S. Department of Defense, the Internal Revenue
10 Service.

11 I have also done consulting work on behalf of a variety
12 of different intelligence agencies indirectly. But that's
13 about it.

14 Q. And do some of those services include things like
15 speaking at government-sponsored events or conferences?

16 A. Yeah. With regards to intelligence agencies, the work
17 that I do is primarily giving presentations at
18 conferences. It's not in the form of spying.

19 Q. Do you do any consulting in connection with criminal
20 cases?

21 A. Yes.

22 Q. And in fact, you have been retained here in this case?

23 A. That's correct, yes.

24 Q. In how many cases have you been retained as an expert in
25 a federal criminal case by the U.S. government?

1 A. I believe this would make it eighteen.

2 Q. And are those listed there on page two of your resume'?

3 A. That's correct, yes.

4 Q. And those include military commissions as well?

5 A. Those are the cases in which I have been hired as a
6 consultant. I should say the cases where I actually
7 testified in as a witness, that would be twelve.

8 Q. Okay. And the cases where you have been retained as a
9 consultant, that also includes military commission cases?

10 A. Actually that would be an additional two. I don't think
11 I included that in that number.

12 Q. And those are listed here on your resume'?

13 A. Yes. The additional two cases would be Palulu and
14 Homden in the Guantanamo Bay tribunals.

15 Q. Now, what are some of the general topics of your
16 testimony that you presented in the cases for which you have
17 testified as an expert witness?

18 A. Generally speaking, I talk about transnational terrorist
19 groups, primarily relating to the Arab Afghans. So
20 everything from Al-Qaeda itself, Al-Qaeda's leadership,
21 Al-Qaeda financing, Al-Qaeda recruitment, to the same
22 aspects, the history of these organizations, not just
23 Al-Qaeda, but also groups like Lashkar-e-Tayyiba, like
24 Jaish-e-Mohammad.

25 These are not Al-Qaeda, but these are groups with

1 similar ideologies or a similar background or similar
2 heritage. And part of what I do is study the comparative
3 differences and similarities between these different
4 movements. It's a comparative analysis.

5 A lot of times I'm brought up to talk about Chechnya,
6 Pakistan, Afghanistan, comparing these movements, explaining
7 what each one of them is.

8 Q. As part of that, do you -- have you had any occasion to
9 testify about how these groups, either the propaganda that
10 they disseminate or how they use that for recruiting
11 purposes?

12 A. Starting when I began my research back in 1998, one of
13 the most lucrative areas of research that was open to me was
14 online databases and the internet, the reason being is
15 because I'm relatively young, I'm computer savvy, and most of
16 the people that are in my field are not. So this was a great
17 open area for me to get into.

18 And so one of the big areas of research that I do is
19 that I engage in the comprehensive collection of terrorist
20 propaganda videos. And I store all these in a massive,
21 massive library database. And what I do is that I collect
22 these videos and I collect these communiques off the
23 internet, because in many cases they are the best sources of
24 information that we have about some of these organizations.

25 It used to be that terrorist groups went to television

1 stations, or they would conduct interviews with *The New York*
2 *Times*. They don't do that anymore.

3 Nowadays if you want to get access to original
4 interviews, original speeches, original documents distributed
5 by terrorist organizations, the number one place to get that
6 information is from the internet.

7 Q. Okay. And we are going to talk more about that as
8 well.

9 In the course of when you testify about these things --
10 or you have testified about these things in other federal
11 cases?

12 A. That's correct, yes.

13 Q. Now, are there cases where you are retained, but you
14 ended up not testifying as an expert?

15 A. Yes.

16 Q. And just looking, you actually had different columns on
17 your resume' indicating where you were hired, where you
18 testified as a fact witness, and where you testified as an
19 expert; is that correct?

20 A. That's correct.

21 Q. They are on page two. So I just want to ask you
22 questions about a couple of these.

23 Were you retained as an expert in the case *U.S. v. Jose*
24 *Padilla* in the Southern District of Florida in 2007?

25 A. Yes, I was.

1 Q. And what was, just very briefly, the nature of the
2 allegations in that case?

3 A. The nature of the allegations was material support of
4 terrorism, an individual who allegedly had gone to a
5 terrorist training camp and allegedly was involved in other
6 criminal activities.

7 Q. And what was the topic of your proposed testimony or
8 what were you retained to deal with?

9 A. Specifically I was going to testify about the conflict
10 in Bosnia-Herzegovina and the conflict I believe also in
11 Chechnya, although it turned out Bosnia ended up not being in
12 the litigated case in court.

13 Q. So you didn't end up testifying in that?

14 A. No, my testimony wasn't needed.

15 Q. And also there is a case *U.S. v. Ahmed Omar Abu Ali* in
16 the Eastern District of Virginia in 2005?

17 A. That's correct, yes.

18 Q. What were the nature of the allegations in that case?

19 A. This was an individual who had allegedly joined Al-Qaeda
20 in Saudia Arabia and was involved in planning for
21 antiAmerican activities with individuals involved with
22 Al-Qaeda in Saudia Arabia.

23 Q. What was the topic of your proposed testimony there?

24 A. Al-Qaeda in Saudia Arabia.

25 Q. And did you end up testifying in that case?

1 A. No, I didn't.

2 Q. Did the court conduct any type of *Daubert* hearing on
3 your qualifications or methodology?

4 A. No. I actually never appeared in court. My
5 understanding was the paperwork was submitted late. I was
6 brought in as kind of a late addition, and my understanding
7 is the judge decided it was too late to be submitting expert
8 witnesses.

9 Q. Now, on your resume', you list several upcoming cases
10 there at the bottom in which you have been retained but your
11 testimony is forthcoming. Have you, since you wrote this
12 resume', testified in any of those cases?

13 A. Yes, I believe actually I have.

14 Q. Which one?

15 A. I have testified in *United States v. Oussama Kassir* in
16 the Southern District of New York, which took place
17 approximately three weeks ago in the Southern District of
18 New York.

19 Q. And were you subjected to a *Daubert* hearing in that
20 case?

21 A. No, the judge rejected holding a *Daubert* hearing in that
22 case because he didn't feel it was necessary.

23 Q. Now, you said earlier that you have also consulted with
24 foreign governments as well?

25 A. That's correct.

1 Q. What -- just can you name a couple of the foreign
2 governments that you have consulted with?

3 A. Sure. I have done consulting work on behalf of the
4 SO-15 Counterterrorism Command at New Scotland Yard in the
5 United Kingdom, Central Scotland Police, West Yorkshire
6 Police, the International Court of Justice at the Hague, the
7 State Security Prosecutor in Copenhagen, Denmark, the Supreme
8 Court of Bosnia-Herzegovina in Sarajevo, the Supreme Court of
9 New South Wales in Australia, Sydney, Australia.

10 Q. Are all of those consultations related to criminal
11 cases?

12 A. Yes.

13 Q. And have you testified as an expert in any of those
14 cases?

15 A. Yes.

16 Q. And are those listed on page three of your resume'?

17 A. They are indeed.

18 Q. Now, have you also consulted for any United Nations
19 entities?

20 A. Yes.

21 Q. What ones would those be?

22 A. Number one, I worked as a consultant on behalf of the
23 International Court of Justice at the Hague, working on war
24 crimes prosecutions of individuals from Bosnia-Herzegovina.
25 I also worked on behalf of -- well, I don't know if you would

1 quite call it a UN agency, but it's an international agency,
2 the Office of the High Representative of
3 Bosnia-Herzegovina.

4 I also do consulting work and I give presentations on a
5 pretty regular basis on behalf of the United Nations security
6 teams both in Afghanistan and in East Africa.

7 Q. And you mentioned also that you consult with private
8 sector entities and individuals; is that correct?

9 A. Yes.

10 Q. Have any of those been in connection with civil cases?

11 A. Yes.

12 Q. And have you actually testified as an expert in any
13 federal civil cases?

14 A. Yes.

15 Q. What civil case, and can you briefly describe your
16 testimony?

17 A. Of course. Last year I testified as an expert witness
18 on behalf of the plaintiffs in *Gates v. Syria*. That case was
19 a case by -- filed by victims of terrorism against the
20 government of Syria, the allegation being that the government
21 of Syria had allowed Al-Qaeda operatives to transit through
22 Syria into Iraq, and thus bore some degree of responsibility
23 for the acts that those individuals had carried out inside of
24 Iraq, particularly the beheading of a U.S. hostage in
25 Iraq. That was the plaintiff.

1 And specifically my testimony was identifying particular
2 videos released by Tanzim Al-Qaeda, the Al-Qaeda network in
3 Iraq, namely the videos of the execution of these hostages.

4 I also testified about other documents which I recovered
5 from Al-Qaeda in Iraq, indicating that Syria, the Syrian
6 government was aware of the role that Al-Qaeda operatives
7 were playing and had done nothing of it.

8 Q. Taking a look back at page one of your resume', at the
9 top there you say, you talk about the 9/11 Finding Answers
10 Foundation?

11 A. That's correct.

12 Q. What is that?

13 A. The 9/11 Finding Answers Foundation or NEFA was founded
14 after 9/11 in order to help promote nonprofit
15 counterterrorism research, a similar idea to the
16 Investigative Project. Very, very much focused on Al-Qaeda
17 and present national security threats to the United States,
18 but trying to help a wide, wide scope of people understand
19 this.

20 The notion being that there is a lot of talk and there
21 is a lot of debate about terrorism, but what's missing are
22 the facts, what's missing are the, you know, here is what's
23 really happening, let's base our debate and our policy on
24 these facts.

25 So we were trying to put out as much factual information

1 to let people make up their own minds, to let people decide
2 for themselves, you know, what do these facts mean.

3 So the NEFA puts out -- has a vast library of documents,
4 court cases, video recordings, transcripts, relating to
5 terrorism and counterterrorism again, for, you know,
6 journalists, academia, human rights activists, anyone who is
7 interested in using this for the right purposes.

8 Q. What is your role at NEFA as a senior investigator is
9 what you have on your resume'?

10 A. Number one, one of the big things I do is provide them
11 with information. I provide them with research. I give them
12 copies of original audio recordings, original video
13 recordings, original communiques.

14 I have help provide translations services. I have a
15 research assistant who is a native Arabic speaker, so
16 sometimes he does translation stuff for them.

17 I provide them with analysis. I speak in conferences on
18 their behalf. We do a lot of that stuff.

19 Q. And when you -- when you publish articles through NEFA,
20 are they subject to any review?

21 A. Oh, yes.

22 Q. What is that process?

23 A. Number one, I should add that before anything goes to
24 NEFA, I take my papers and I have -- I have a collection of
25 colleagues that I submit them to, colleagues that include my

1 former mentor at Georgetown, Dr. John Voll, people that
2 include everyone from Dr. Mark Lynch in GW University in
3 Washington, D.C., a wide variety of people. Dr. Mark Sageman
4 who I'm currently working on a research project with. I will
5 send my papers out to these people to begin with in draft
6 form to get comments, to get feedback.

7 But then even after that's over, then the papers have to
8 be very carefully proofread by all the senior management of
9 NEFA, by all of my colleagues at NEFA.

10 And after that, I then have to go through -- and,
11 I mean, it's a laborious process. Once again, as with the
12 Investigative Project, NEFA is putting out very, very
13 detailed information about terrorist financing, terrorist
14 recruitment, et cetera. These are criminal issues, and it's
15 very important that every fact is very carefully
16 cross-checked and every fact we have a source for.

17 So it's a very rigorous process and it takes quite a bit
18 of time.

19 Q. I would like to talk just briefly about some of the
20 publications that you have done. Have you published any
21 books?

22 A. Yes.

23 Q. And how many?

24 A. I published one so far.

25 Q. And what's the title of that book?

1 A. It's *Al-Qaeda Jihad in Europe: The Afghan-Bosnian*
2 *Network*.

3 Q. When was it published?

4 A. It was published in 2004 in the United Kingdom.

5 Q. And can you provide a very brief synopsis of that book,
6 the topic of the book?

7 A. The idea behind the book was that when I was doing the
8 research for my honors thesis at Georgetown, I realized that
9 there was one I guess you would call it geographic area that
10 was being left out of my analysis.

11 I focused on four areas in my thesis, but I was coming
12 up with a lot of research, a lot of very interesting
13 information about the conflict that had taken place in
14 Bosnia-Herzegovina, in the Balkans during the 1990s, and the
15 involvement of foreign fighters.

16 So after I finished my thesis I thought, you know, it
17 would be very, very interesting, and there is nothing else
18 out there about this, about the role of foreign fighters,
19 particularly foreign fighters that come from the Arab Afghan
20 movement in the Balkans during the 1990s, not because they
21 were a lot of people, but because it was a very unusual group
22 of people, and some of these people ended up becoming very
23 famous later on, and kind of tracing where they had come
24 from.

25 So essentially that's exactly what it was, very similar

1 to my honors thesis, except focusing now on one particular
2 country that the Arab Afghans had gone to after the end of
3 the Afghan War and trying to understand why is it that
4 these -- first of all, trying to understand what happened
5 there, you know, the actual facts as told by people on the
6 ground.

7 But then on top of it, trying to why the Arab Afghans
8 had met such a terrible failure in the Balkans, why the
9 Bosnians, even though they were Muslims, by and large
10 rejected the Arab Afghans in their ideology and their
11 approach towards Islam and their approach towards politics,
12 and trying to understand how those lessons could be
13 extrapolated and be applied to places like Iraq, which was
14 ongoing at the time I was writing my book.

15 Q. Now, what was the target audience for that book?

16 A. Well, it was published by an academic press, and it is a
17 very, very detailed book. It's not a general interest book.
18 It was mainly published for other academics, policymakers,
19 law enforcement. It has hundreds of footnotes.

20 It's not a general interest book, but the idea was is
21 I felt that what was really missing was a history of the
22 foreign fighters in Bosnia-Herzegovina as told by them in
23 their own language, in their own documents. Because the west
24 by and large has not really documented this phenomena at
25 all. The best sources are their sources.

1 Q. And has the book actually been used in academic
2 settings?

3 A. Oh, yes.

4 Q. Do you know of any of them?

5 A. Yes, it's been used as a course book in Johns Hopkins
6 University, Harvard Kennedy School of Government, it's been
7 used at the University of Kent, it's been used in
8 Australia.

9 I mean, if you do a search for it on the internet, you
10 will see it's available on a lot of different reading lists
11 and scholastic book sellers I guess you would say.

12 Q. Since it was published by an academic publisher, was it
13 subject to peer review before it was published?

14 A. Not just peer review. First of all, the publisher
15 itself picked peer review -- I didn't pick the peers. The
16 peers were picked by them.

17 But then even after that, because of the fact that the
18 book was published in the United Kingdom and because of the
19 fact that it had an entire chapter on terrorist financing,
20 the publisher was extremely cautious and wanted to make sure
21 that every single fact could be proven with documentation.
22 Because in the United Kingdom, libel law is very, very
23 serious, it's very strict.

24 So a libel attorney, British libel attorney read through
25 my entire -- again not somebody I hired, somebody that was

1 hired by my publisher, read through the entire thing. So
2 everything was very, very carefully cross-checked because the
3 publisher wanted to make sure that after a series of
4 different lawsuits that had recently been filed against
5 similar books, that this wouldn't happen with mine.

6 Q. Now, in addition to your book or after your book, have
7 you continued to write articles in papers?

8 A. Yes.

9 Q. And do you have on page three of -- or page four, excuse
10 me, of your resume', it says major papers, are these some of
11 the papers that you have written?

12 A. Yes, they are.

13 Q. Is this a complete list or just highlights?

14 A. No, this is just highlights.

15 Q. Now, some of these papers -- what type of publications
16 have you published these papers in?

17 A. I publish them wherever I have an opportunity to
18 publish. Obviously NEFA, the 9/11 Finding Answers
19 Foundation, pays me to write papers on their behalf, so
20 that's my first obligation.

21 But I have also published papers in everything from *The*
22 *Sentinel*, which is the official publication of the West Point
23 Counterterrorism Center, last summer I was invited to publish
24 a chapter in the *Annals of the American Academy of Social and*
25 *Political Sciences*, which was releasing a special edition of

1 the *Annals* which was edited by Richard Clark, the former
2 White House counterterrorism czar, who invited me to write a
3 chapter for that *Annals* about home-grown terrorism.

4 I am currently working on a chapter on behalf of
5 Dr. Javier Jordan at the University of Granada in Spain for a
6 Spanish-language academic publication for a chapter about
7 Al-Qaeda in the Islamic Maghreb, M-a-g-h-r-e-b.

8 But, yeah, I mean, it's everything from academic
9 journals to 9/11 Finding Answers Foundation to I guess you
10 would call it practitioner journals which is what I would
11 consider *The Sentinel* to be. But, yeah.

12 Q. And have you written articles on Lashkar-e-Tayyiba or
13 other Pakistani groups?

14 A. Yes. In fact, I just wrote several articles for *NBC*
15 *News* about Lashkar-e-Tayyiba back last December following the
16 bombings -- or excuse me, following the attacks on hotels in
17 Mumbai. As part of that, I actually interviewed the official
18 spokesman for Lashkar-e-Tayyiba.

19 Q. And is one of the -- actually on your resume' on page
20 four, do you have one of these articles listed, "The
21 Jihadists of Pakistan, Jaish-e-Mohammed" --

22 A. That's another report that I published on behalf of NEFA
23 that includes a chapter on Lashkar, yeah.

24 And I should add as well, Lashkar also comes up in my
25 book because of the fact that one of the central characters

1 in my book in addition to being very involved in Jihadi
2 activities in the Balkans in Bosnia was also credited by
3 Lashkar as being one of the co-founders of Lashkar-e-Tayyiba.

4 Q. Have you also written articles about terrorism and the
5 internet, terrorist groups' use of the internet?

6 A. Yes.

7 Q. You may have mentioned a couple of them. Did you write
8 an article for *Foreign Affairs Magazine*?

9 A. I neglected to mention that one. Yes, last year
10 I wrote -- I was invited to write a piece in *Foreign Affairs*
11 about terrorist use of the internet. The reason I was
12 invited to write that piece was because of the fact that I
13 had given two presentations in front of the Council on
14 Foreign Relations in New York and in Washington, D.C., on
15 this subject, and one of those in attendance at the
16 presentation was the editor of *Foreign Affairs*, which is a
17 CFR publication, and after giving my presentation he invited
18 me to write a piece about this.

19 Q. And in fact, have you also written any articles on some
20 of the co-conspirators in this case?

21 A. Yes.

22 Q. Specifically Younis Tsouli and Ahbid Khan?

23 A. Yes.

24 Q. What was the source of information that you used in
25 those articles?

1 A. Well, it was a combination of sources. Number one, at
2 one time I was in direct contact with Mr. Tsouli and others.

3 But number two, I served as a consultant on behalf of
4 the West Yorkshire Police in the case against Mr. Khan and
5 his associates. As a result of me serving as a consultant in
6 that case, I was given access to the raw preserved hard
7 drives of Mr. Khan and others in that case, and I was asked
8 to review the contents of that material.

9 Separate from that, I have also come across material in
10 other cases that I have worked on related to co-conspirators
11 involved in this case.

12 Q. And is that something that we asked you to do?

13 A. No.

14 Q. Have you -- let's see. Do you attend -- you mentioned
15 speaking before the Council on Foreign Relations. Do you
16 regularly attend conferences in your area of international
17 terrorism?

18 A. Yes, I regularly attend and speak at conferences. In
19 the last four months I have attended conferences in New York
20 at the United Nations on two separate occasions, one of them
21 was actually me and Dr. Mark Sageman presenting was the focus
22 of the meeting.

23 I have also attended a conference on behalf of the OSCE,
24 the Organization for Security and Cooperation in Europe,
25 where I did a presentation two months ago in Belgrave.

1 I am supposed to give some presentation on behalf of the
2 State Department coming up in a few months. Last summer I
3 was in Spain, I did a series of presentations on behalf of
4 the U.S. State Department to European Muslim entrepreneurs.

5 So, yeah, I think you could say it happens quite
6 frequently.

7 Q. I would like to turn now to talking about the sources
8 that you use and your methodology and how you arrive at the
9 information that you then go on to publish.

10 You mentioned a couple of those sources, and the first
11 one that I want to talk about is when you talk about the
12 original materials that you obtained from terrorist groups.
13 And you mentioned some of those types.

14 Just what types -- what exact types of materials are you
15 talking about when you say I use original materials from
16 terrorist groups?

17 A. Sure. Well, number one, there is the idea of getting a
18 communique. Terrorist organizations issue official
19 statements. Those are called bayans or communiques,
20 b-a-y-a-n-s.

21 I collect all the communiques. Sometimes they are
22 numbered, sometimes they are not. I collect all of them, and
23 I save them in a database so they are instantly
24 recoverable.

25 Aside from written communiques, there are also

1 magazines. Organizations, militant organizations produce
2 their own magazines. I collect those magazines, I translate
3 those magazines, I excerpt those magazines, I go through
4 them.

5 There is also video recordings and audio recordings.
6 Long before the internet came about, terrorist organizations
7 had been filming themselves on camera, and they have been
8 distributing that for propaganda reasons, for communications
9 and for other aspects.

10 I collect all of those video recordings, and I have a
11 vast collection dating all the way back to the late 1980s of
12 original recordings. Some of these recordings were maybe
13 never actually meant to be publicly distributed, but I have
14 gotten a copy of them.

15 Recordings of individuals at conferences in the
16 United States, recordings of people in conferences
17 abroad. People at meetings in Afghanistan,
18 Bosnia-Herzegovina, Pakistan and elsewhere.

19 But like I said, it's a combination of text documents,
20 video and audio recordings primarily.

21 Q. And just touching on things that you said, when you are
22 talking about people speaking at conferences, people doing
23 this, these are people who are associated with terrorist
24 organizations --

25 A. Yes.

1 Q. -- or terrorist themselves?

2 A. That's correct, yes. Either individuals who are
3 representatives of terrorist organizations, people who are
4 discussing terrorist organizations, their own personal, you
5 know, accounts and knowledge of terrorist organizations on
6 camera, anything again that helps us understand and that we
7 can look at this and say, look, you know, this is not the
8 same thing as being able to sit and question this person
9 face-to-face, but they are saying that on camera, and it's a
10 pretty damning piece of evidence.

11 Q. Now, how do you get these materials?

12 A. Well, prior to 9/11, obviously there was the internet
13 prior to 9/11, but there were other ways as well which I got
14 these materials.

15 Number one, I got in direct contact with what I call
16 Mujahideen clearinghouses primarily based in the
17 United Kingdom. These were organizations that essentially
18 sold Jihadi propaganda.

19 They were willing to sell it to you if you knew where
20 they were located, if you knew how to get in touch with them,
21 if you knew how to reach them. It wasn't that difficult, but
22 you had to know where to go.

23 The other thing was that I would contact people
24 directly. At one point I discovered that a close friend of
25 Osama Bin Laden from Saudia Arabia had written a book in

1 Arabic all about the founding of Al-Qaeda as told by personal
2 interviews with the individuals involved with the founding of
3 Al-Qaeda. The book was written in Arabic, it was published
4 in Saudia Arabia, and it was not widely distributed.

5 I hunted and I hunted, I found the contact information
6 for this individual in Saudia Arabia, I contacted him, and I
7 said, Look, I understand you have written the definitive book
8 about the Afghan Jihad. It's not available here in the
9 United States. Can you please send me a copy?

10 Sure enough he sent me a copy with his compliments.

11 So it's a combination of doing that. It's a combination
12 of also going on the internet. As I said before, one of the
13 big places -- or the place, really, where terrorist
14 organizations or militant organizations distribute their
15 propaganda, their video, their audio, their text documents,
16 these days is on the internet.

17 In order to get that material, you have to be registered
18 on particular Arabic-language discussion forums on the
19 internet which serve as the primary distribution points for
20 this material.

21 What you have is you have users that go online, users
22 that are actually in the field from these Jihadi
23 organizations, and they will post this stuff and distribute
24 it to people around the world.

25 Now, it's not secret if you know where to find it, but

1 the problem is finding it. I have been tracking it for so
2 long that I know where to look. And so after looking and
3 after collecting, I have assembled a database that is about a
4 terabyte and a half in size, which is like a million
5 megabytes, millions and millions of megabytes of information,
6 millions of documents, video recordings, audio recordings.
7 And everything is very, very carefully saved into kind of a
8 library-style format. These are the records.

9 Q. Now, how do you know when you obtain these materials,
10 whether from a bookstore or from the individual directly or
11 from the internet, how do you know they are authentic?

12 A. That's one of the big issues, how do you know whether
13 something is really what it is?

14 Well, number one, in some of these recordings, you have
15 explicit video or audio of somebody who is very
16 recognizable. Osama Bin Laden, and he's in Afghanistan with
17 Zawahiri, with his top deputy, it's clearly legitimate.

18 But in many cases what we have had is we have actually
19 had Al-Qaeda come out and say, If you are looking for
20 information about us, look here, particularly when it comes
21 to online sources.

22 With the online sources that I use, every single online
23 source that I use to collect information from has been
24 explicitly and directly named by Al-Qaeda as the place, the
25 place -- not one of the places, but the place to get their

1 information from.

2 Q. Is that true for the other groups that you study, such
3 as LET or any other groups that you --

4 A. Any other -- recently a group popped up called the
5 Turkestan Islamic Party, which is a group that very few
6 people ever heard of, but it's a group that we have been
7 focusing research on. How do you know what this group is?

8 Well, it turns out that this group has issued a
9 statement saying if you want information about us, go to this
10 particular group, these people online, this virtual group,
11 this website online, that's where all of our information
12 is. If it doesn't come out through there, it's not
13 official.

14 And dozens of groups have done this. Shabaab
15 al-Mujahideen, a group in Somalia, did the same thing
16 recently. The reason being is because these groups have
17 gotten very sensitive about the media printing stories about
18 them which they regard as fraudulent or untruthful or lies.

19 So the only way that they can get out their own
20 perspective is through the internet. So they very
21 aggressively say, Don't go to al-Jazeera, don't go to
22 al-Arabiya, don't go to NBC News or ABC, go right here. If
23 you want to know where our stuff comes from, it's right
24 here.

25 Q. Now, once if you determine that a particular item is

1 authentic, it is what it is, it comes from a terrorist
2 organization or a terrorist supporter, how do you then assess
3 whether the information that's in there is actually reliable
4 or truthful?

5 A. Well, you know, that's a big issue, that these are
6 propaganda recordings. You have to take them with a grain of
7 salt.

8 However, I'm not looking in this to try to get the
9 political perspective of these individuals. I understand
10 what their political perspective is. What I'm looking at
11 here is for original video of people we have never seen
12 before, individuals speaking, individuals talking, or talking
13 about others, trying to learn about mechanics of the
14 internals of this organization.

15 Because what these groups don't realize is that in every
16 propaganda recording they release, sure, they are
17 broadcasting a message, but these recordings also contain a
18 lot of factual information which we didn't have access to
19 before or at least we didn't have confirmation of, what
20 somebody looks like, what kind of clothes they are wearing,
21 where they might be speaking from, who they are standing next
22 to.

23 Recently a group in central Asia wanted to prove their
24 pedigree as being an official Al-Qaeda affiliated group. So
25 what did they do? They released a video of their senior

1 leader meeting with Bin Laden and Zawahiri in Afghanistan, the
2 idea being, Look, see, if you have any doubts that we are in
3 contact with these guys, here is video of us meeting with
4 them.

5 So, you know, you can't say that they are working
6 together on a daily basis, but that video proves beyond a
7 shadow of a doubt that they have been in contact with each
8 other. And that's something that before we had that video we
9 could only guess at, we could only surmise at.

10 Q. Now, you mentioned that you collect this original source
11 material and you put it in a database. Now, when you do
12 that, can you -- are you able to go back and figure out where
13 and how you obtained it?

14 A. Yes.

15 Q. And how -- how do you do that? How does that work?

16 A. Everything that I save into my database is, number one,
17 saved in a very, very careful format, so that I can recover
18 it very quickly.

19 First of all, I put the date of the original document,
20 the date when it was, you know, issued or whatever. The
21 source: A website, an individual, an organization, wherever
22 it came from. A title.

23 And then if it comes from the internet, documents from
24 the internet often have what are known as thread numbers,
25 kind of like a telephone number, a unique identifying number,

1 which allows us to recover that message off of a forum any
2 time in the future. Again, like a specific identifier
3 number.

4 So even just from the file names alone, everything
5 I save, the file names alone, you can see the source, the
6 date it was saved, where it came from, what's in there, and
7 sometimes even the unique numeric identifier number where it
8 came from specifically on the internet.

9 On top of that, then every single document that I get is
10 then carefully filed away into electronic folders based upon
11 organizations, dates, regions.

12 And then on top of that, everything in the database is
13 indexed with software that's known as ISYS, I-S-Y-S, which
14 allows us to do what is known as a Boolean search,
15 B-o-o-l-e-a-n, through this information. By Boolean I mean
16 that I can literally type "and," "if," "or," "nor," kind of
17 the same things you see in LexisNexis, but for anything in my
18 database.

19 So if I'm trying to find out how many times someone's
20 name comes up within five words of a particular organization,
21 no problem, instantaneous results through all the documents
22 in my database.

23 Q. You also mentioned that a lot of the materials, source
24 materials are in foreign languages?

25 A. That's correct.

1 Q. And although you studied a little bit of Arabic, do you
2 consider yourself fluent?

3 A. No, I'm fluent in English and French.

4 Q. Now, how then do you review those foreign language
5 materials?

6 A. I would never try to translate something on my own for
7 professional purposes because I'm not a fluent speaker, so I
8 have a research assistant who works with me at my office in
9 New York who is a native speaker, who is native Jordanian,
10 who sits there and works with me. And anything I need
11 translated from Arabic, he translates.

12 Now, occasionally I have other documents which appear
13 which are not in Arabic. We have documents that appear in
14 Turkish and other languages. I have contacts from all over
15 it world, Pakistan, Turkey, Europe, elsewhere, where if I
16 need translators, if I need people to do work, it's no
17 problem.

18 These are either students, grad students, they are
19 stringers, they are people that are involved in doing this on
20 a regular basis and they are very familiar with this. They
21 are all native speakers obviously, and I find that for
22 translating purposes, I prefer to use only native speakers.

23 Q. Now, the second type of source material that you talked
24 about is actual interviews with terrorists and their
25 supporters. Can you give some examples of the types of

1 people you are talking about, and are these personal
2 interviews that you have done with them?

3 A. Sure. Back in 2001, I interviewed Sheikh Abu Hamza
4 al-Masri. Abu Hamza is currently awaiting extradition to the
5 United States to face criminal charges.

6 Abu Hamza has served for many years as the acknowledged
7 spokesman for Mujahideen groups in various different parts of
8 the world, including the Taliban, including different Arab
9 Mujahideen outfits in the Arab peninsula and elsewhere.

10 Anyway, the point of this is I went to his office in the
11 United Kingdom, his mosque, and I sat with him and his
12 followers, and I interviewed him in great length. I also
13 interviewed Sheikh Omar Bakri Mohammad. Omar Bakri Mohammad
14 founded an extremist organization in the United Kingdom known
15 as Al-Muhajiroun.

16 I actually went underground in Al-Muhajiroun and I even
17 joined them, but I followed them and I went to all of their
18 events and I spoke at length with Sheikh Omar and I went to
19 their side events and I spoke with their -- I was doing a
20 comprehensive study of the group and the people involved and
21 whatnot.

22 I have also interviewed Dr. Mohammed Al-Massari, who was
23 involved in procuring a satellite phone for Osama Bin Laden
24 in 1996, and also distributed Osama Bin Laden's first
25 declaration of war in 1996.

1 I have also interviewed Dr. Saad Al-Faqih, who was also
2 involved in procuring a satellite phone for Osama Bin Laden
3 in 1996. He's been designated as a specially-designated
4 terrorist entity, I believe, by the United States
5 government.

6 I have also interviewed the official spokesman of
7 Lashkar-e-Tayyiba, Abdullah Muntazir, I interviewed him twice
8 over the telephone back last December.

9 At the conclusion of our second interview, Mr. Muntazir
10 invited us to send someone with a camera to LET's
11 headquarters in Muridke, Pakistan, at which time -- again,
12 I'm not in Pakistan, I'm located in the United States, so I
13 had my colleague in Peshawar go down with a camera, and went
14 there and he filmed the whole thing, and then sent the video
15 to me over the internet.

16 So within twenty-four hours I had interviewed Lashkar's
17 leader twice or spokesman twice, and we had original video of
18 the inside of Lashkar's camp in Muridke.

19 Q. Have you also interviewed anyone who has fought with any
20 of these organizations, Lashkar-e-Tayyiba or otherwise?

21 A. Yes. Particularly with Lashkar-e-Tayyiba, I have
22 interviewed Ismail Royer. Ismail Royer is an American
23 national who joined Lashkar-e-Tayyiba I believe in 2000,
24 2001, and who was at Lashkar's facilities over in Pakistan,
25 was at Lashkar's recruitment office with Australian

1 David Hicks, who was later captured in Afghanistan.

2 Mr. Royer eventually pled guilty, and as part of his
3 cooperating agreement spoke with me in jail. We engaged in a
4 long interview, and we discussed at great length how he had
5 joined Lashkar, how he got information about them, how he got
6 in contact with them, the fact that he looked up their
7 internet website, various different other aspects.

8 Q. And are there other cooperating defendants that you have
9 spoken with in this same vein?

10 A. Yes.

11 Q. Now, how do you assess the reliability of the
12 information that these people provide?

13 A. It's basic social science, comparative analysis.

14 I collect as many accounts of a particular historical
15 event or a particular aspect of an historical event as
16 possible, and then I compare and contrast those accounts.

17 And you try to take into account, some of these accounts
18 are written by people with biases, political biases or other
19 biases, but the idea is that by comparing and contrasting
20 these various different accounts, you can find out what the
21 common threads are, what everyone seems to agree on.

22 And you can also see what are admissions against
23 interest. Many times in these recordings or in other -- you
24 know, in interviews I do or whatnot, people will say things
25 which are against their interest. It doesn't make any sense

1 for them to advertise this. If it's not true, why would they
2 be advertising it? It's against their interest. So that's a
3 very, very powerful indicator that what they are saying is
4 probably accurate.

5 Q. You mentioned earlier you also deal with tertiary
6 sources.

7 A. That's correct.

8 Q. And you mentioned government materials, scholarly works,
9 other open source database documents. How do you fit those
10 into your analysis?

11 A. I really use those in order to flesh out detail at the
12 end. Those are not my primary sources. But if I come across
13 a particular interesting article in *The New York Times* which
14 cites somebody, which includes a quotation from somebody
15 important from an organization or from the United States
16 government, certainly that's relevant and interesting and
17 worthwhile to include in my analysis.

18 Sometimes it's just helpful because of the fact that if
19 you are trying to establish that a particular event occurred,
20 i.e., the Taliban took over Kabul on this particular date,
21 it's just helpful to be able to refer to say, Look, *New York*
22 *Times*, you know, reported on this date, if you have any
23 question about when that took place, go ahead.

24 But that's not the focus of my analysis. That's not
25 where -- it's not the focus of my research. It's just really

1 to flesh out additional detail.

2 Q. Now, the types of sources that you use, are those
3 commonly used by other academics and experts in your field?

4 A. They are the exact same.

5 Q. And do other academics use sources that you don't?

6 A. I couldn't think of one that they don't -- I mean, the
7 primary sources to do this research for are going out and
8 interviewing terrorists and terrorist organizations, and it's
9 collecting their propaganda and collecting their
10 materials. I mean, that's the way you do this.

11 Q. As you obtain more and more information that you
12 determine to be reliable, do you modify or reevaluate your
13 opinions or conclusions, if necessary?

14 A. Of course. I mean, this is an ongoing project, and I'm
15 looking for -- the ultimate search is for truth, you know,
16 facts. If I ever find out anything that contradicts what I'm
17 saying or -- it's not something that happens very frequently,
18 but if I do find something that contradicts, sure, I mean,
19 that's the first thing I do is I try to understand why does
20 this conflict with what my understanding is and how does --
21 how should this change my view, how should this alter my
22 view.

23 I would like to consider myself to be a fairly
24 open-minded guy. That's one of the reasons I enjoy talking
25 with members of these organizations and people that represent

1 these organizations, because even if I don't agree with them,
2 it's very interesting to speak with them. You learn a lot.

3 Q. Now, how does the methodology that you use, this
4 analysis of reliability and synthesis into your opinions, how
5 does that differ from the method that you studied originally
6 at Georgetown as part of traditional social science
7 methodology?

8 A. It's direct, it's not an outgrowth. It's the
9 method. It's the same method that Dr. Joseph Lepgold taught
10 me back in 2001, the same method that was taught to me by
11 Dr. Michael Brown, Andrew Bennett, all the folks at
12 Georgetown.

13 It's certainly been focused by my time in law school and
14 in my experience in having to write long papers and whatnot,
15 but the method itself is established back then.

16 Q. Is it the same methodology that other experts in your
17 field use?

18 A. I mean, comparative analysis is the basic social science
19 method. It's -- I would call it a critical method.

20 Q. Now, is it the same methodology that you use when you
21 were retained as an expert in cases?

22 A. Yes. I mean, exactly what I'm doing is I'm comparing
23 and contrasting information that is either in my possession
24 and is given to me or comparing different sources, I'm
25 contrasting different sources, and I'd like to think that

1 I present as inclusive an opinion as possible that includes
2 as many facts and as many sources so that people can go back
3 and see what the breadth of research is available on this
4 particular topic.

5 Q. Now, I would like to turn to the testimony that you have
6 been retained to provide in this case.

7 If you were allowed to testify in this case, the
8 government would ask you to provide context about certain
9 pieces of information in various items in evidence.

10 Is that something that you have testified about in other
11 federal cases, that nature of that testimony?

12 A. Yes, very frequently I'm asked to evaluate specific
13 pieces of evidence and comment about where that evidence most
14 likely comes from, what is it, what is its significance.

15 Q. Now, just taking an example, if there is a statement or
16 a communication where people are talking about fighting with
17 Lashkar-e-Tayyiba, one of the questions we might ask you to
18 explain to the fact finder is what is Lashkar-e-Tayyiba, what
19 are its goals, what is its purpose, how do people become
20 fighters.

21 A. Sure.

22 Q. Is that topic, have you testified about that in other
23 federal cases?

24 A. I just testified about it two weeks ago in the Southern
25 District of New York in Oussama Kassir. That was one of the

1 specific subjects of my testimony in Kassir.

2 Q. Are there other cases where you testified about that as
3 well?

4 A. I have testified about that particular subject many of
5 the cases I have testified about.

6 Q. And is the basis of knowledge that you have used to make
7 that, to provide that type of background information, how
8 does that relate to the basis of knowledge you use in your
9 articles about Lashkar-e-Tayyiba --

10 A. Well, I interviewed --

11 Q. I apologize, my question what is the basis -- how does
12 the base of knowledge that you would use to provide that type
13 of background information in your testimony relate to the
14 base of knowledge that you would use when you are writing
15 about Lashkar-e-Tayyiba or discussing it with other experts
16 in your field?

17 A. It's the same. I mean, I don't have two bases of
18 research. I only have one. I have my research, and from
19 that I write everything. My opinion is my opinion,
20 regardless of whoever hires me. My opinion is based on my
21 research, and my research doesn't change. My research is
22 what it is.

23 THE COURT: Can I interrupt for a second?

24 I thought you were going to explain what information you had
25 that gives you an understanding about Lashkar-e-Tayyiba.

1 I thought you were cut off on that.

2 THE WITNESS: Of course, Your Honor. I would be
3 happy to do that.

4 In addition to the two interviews that I did with
5 the official spokesman for Lashkar last September, I have
6 obviously the original video recording that we did. We went
7 to the Lashkar camp in Muridke. So we have video of the camp
8 itself, we have video of Abdullah Muntazir, the spokesman,
9 speaking about what Lashkar does, about the different
10 activities and whatnot.

11 Separate from all of that and aside from my
12 interview with Ismail Royer, who fought with
13 Lashkar-e-Tayyiba, who was recruited by Lashkar-e-Tayyiba,
14 I have also reviewed and I have a collection of hundreds and
15 hundreds of original documents from Lashkar.

16 A video of a Lashkar-e-Tayyiba training camp, which
17 is extremely rare because Lashkar generally doesn't allow
18 video recordings of their camps. Propaganda posters created
19 by Lashkar, distributed by Lashkar.

20 I have a complete archive of what is known as the
21 Taiba Bulletin. Lashkar issued an official news release
22 service in English and in Arabic and a couple other
23 languages, and it was known as the Taiba Bulletin, T-a-i-b-a
24 Bulletin. I have a complete archive of all of the different
25 Taiba Bulletins.

1 I have a complete archive of all of their websites
2 along with all of the material on there. In fact, after
3 speaking with Mr. Muntazir, apparently I know what's on their
4 website better than he does.

5 So, yeah, I think, Your Honor, I have everything
6 from original documents, to speaking with them directly,
7 speaking with people that fought with them, who have been
8 recruited by them in the Americas.

9 THE COURT: Thank you.

10 MS. COLLINS: Thank you, Your Honor.

11 BY MS. COLLINS:

12 Q. Turning to another example, you might be asked to
13 identify or explain the significance of a particular website
14 that is discussed frequently or participated in by people
15 involved in the case. Have you done that type of testimony
16 before in other federal cases?

17 A. Again, that was as recently as two weeks ago in the
18 Kassir case up in the Southern District of New York.

19 Q. Have you done that in other cases as well?

20 A. Because of the fact that a lot of my research is focused
21 on the internet and internet websites, and one of the things
22 that I do is I collect archived copies of these websites and
23 I collect archived copies of posts on the forums and whatnot,
24 that is a major area of my discussion and my research, yeah.

25 Q. Now, are you familiar -- and to bring it little bit

1 closer to this case, are you familiar with something called
2 Tibyan Pub, Tibyan Publications?

3 A. Yes.

4 Q. How are you familiar with it?

5 A. I, number one, have a collection of I believe every
6 single document ever produced by Tibyan Publications as a
7 production.

8 Number two, I used to browse their forum before it
9 became locked to the public. In other words, at a certain
10 point you are required to have a user name and a password to
11 be able to access it.

12 I also have reviewed posts, postings from the Tibyan
13 Publications forum, which I have come across either in other
14 forums or else in my work as a consultant on behalf of
15 British law enforcement.

16 Those include everything from discussions among people,
17 members on Tibyan to even an effort by certain individuals at
18 Tibyan to take over the forum.

19 Q. Have you testified about Tibyan Publications?

20 A. Yes.

21 Q. How many times?

22 A. At least three or four different times.

23 Q. Are those in U.S. cases or abroad?

24 A. Both.

25 Q. And the basis of knowledge for talking about that

1 website is what?

2 A. Well, I know the website, I have all the materials from
3 the website, I read all the materials from the website.

4 The materials from Tibyan Publications come up in
5 basically every single case that I'm hired in that involves
6 computers, so it's something that I encounter on a very, very
7 frequent basis.

8 Q. And what is the significance, based on your research and
9 knowledge, of Tibyan Publications?

10 A. Tibyan Publications takes fatwahs or religious edicts
11 and other materials which are designed to encourage people or
12 instruct people on how to carry out terrorist attacks or why
13 they should carry out terrorist attacks and translates this
14 material into English, the idea being to expand the reach of
15 traditional terrorist propaganda put out by Al-Qaeda from
16 beyond an Arabic-exclusive audience into an audience of
17 people who speaks Arabic, English, French, Dutch, German, you
18 name it. Primarily English, though.

19 In addition to books, I should say, they were also
20 taking Al-Qaeda propaganda films, videos of suicide bombers,
21 and they have created English-language versions.

22 MS. COLLINS: Your Honor, may I have just one
23 minute?

24 THE COURT: Yes.

25 MS. COLLINS: Thank you.

1 Your Honor, I don't have any further questions.

2 THE COURT: All right. Thank you.

3 Mr. Martin?

4 MR. MARTIN: Could we take the morning break now?
5 I would like to discuss with my expert the testimony he just
6 heard today and maybe he might have some suggestions for my
7 cross-examination. I can start a little bit, but before I
8 conclude I want to talk with him.

9 THE COURT: I think that makes sense. Why don't
10 we -- it's almost 10:30. Why don't we break until 10:45. We
11 will be in recess for fifteen minutes.

12 (A recess is taken at 10:27 a.m.)

13 -- -- --

14 (In open court at 10:48 a.m.):

15 THE COURT: Did that give you enough time,
16 Mr. Martin?

17 MR. MARTIN: Yes, sir.

18 Let me before I begin mention a concern I have.

19 We have heard more than an hour's worth of
20 testimony about Mr. Kohlmann's background and the types of
21 things he does and so forth, but we only had a few minutes as
22 to exactly what he's going to testify about.

23 And I talked to counsel in the interim, and I am
24 told that he's going to testify about what he believes LET is
25 about, sort of the general structure of LET, its mission,

1 what it says on its website, those types of things, what he
2 maybe had learned over his investigations from talking with
3 people about LET. I sort of understand that.

4 And then he was going to testify about Tibyan and
5 the -- that website, which is sort of a clearinghouse which
6 translates things.

7 Is that -- I want to make clear, is that the sum
8 total of his testimony? Because that could help me in
9 knowing where I need to go on cross-examination.

10 As opposed to more fact-based testimony, which I
11 have seen in some of his materials or some of his reports
12 where he would say, well, this person was a member of LET,
13 and this person was recruited for LET or something like that,
14 which to me goes beyond the kin of an expert witness.

15 And that was what I was a little bit troubled from
16 the examination, because we never got that from the
17 government.

18 Now, maybe we should have the government, before
19 I begin, sort of clarify for me at least what it is exactly
20 that they are going to call this witness to testify to so I
21 will know the extent to which I will need to cross-examine
22 him.

23 THE COURT: I think that's a fair request.

24 MS. COLLINS: Your Honor, as we have -- we have
25 spoken with Mr. Martin as well as Mr. Samuel and Mr. Wahid,

1 and also in the pleading that we filed I believe last week
2 talking about Mr. Kohlmann's testimony and his
3 qualifications.

4 What Mr. Kohlmann is going to talk about is his
5 testimony is very much tied to the evidence that's admitted
6 at trial. And so, yes, he will talk about what
7 Lashkar-e-Tayyiba is and what it does, and the reason that's
8 relevant is because for an 18 U.S.C. 2339 --

9 THE COURT: I don't think that's what Mr. Martin is
10 saying.

11 I think Mr. Martin is saying that he understands
12 that his testimony would provide context for LET as an
13 organization, what it posts on its website, and what its
14 website says about what it is or whatever materials he's also
15 familiar about. And with respect to that testimony I don't
16 think Mr. Martin has a problem.

17 What he has a problem with, which I think I would
18 have a problem with, is your first statement that he's going
19 to focus on the evidence that's presented in the case without
20 ever disclosing what it is. Because I do think in your
21 examination at one point you said there might be specific
22 pieces of evidence, and we will ask for him to interpret that
23 in context of whatever he knows.

24 I don't know what that means.

25 MS. COLLINS: Yes, Your Honor.

1 What we are talking about is there are certain
2 items, videos, there are recordings that the defendants or
3 the co-conspirators possessed.

4 There are organizations, people, items that they
5 talk about in their communications.

6 THE COURT: Well, I know.

7 MS. COLLINS: I can give you specific examples.

8 THE COURT: I think that's what Mr. Martin is
9 asking, and I think that's your obligation, to state exactly
10 what is it that's at issue.

11 MS. COLLINS: Absolutely.

12 THE COURT: Because he's about to cross-examine
13 without knowing what that is.

14 MS. COLLINS: Sure. And Tibyan Publications is an
15 example of that. There are communications, several of them,
16 where Mr. Ahmed recommends these publications to various
17 people with whom he's talking about Jihad with. He says it's
18 a great website, it has very good information, I have read
19 it, you should read it to.

20 Mr. Kohlmann is here to provide some context for
21 what is Tibyan Publications. That's something that's outside
22 of the kin of the normal lay person, the average juror. They
23 don't know what that is.

24 And so he would say Tibyan Publications is this.

25 How do you know?

1 I have seen it.

2 THE COURT: So the two things so far you have said,
3 LET as an organization and the content of its websites. Now
4 Tibyan Publications, what it posts and what its function is.

5 MS. COLLINS: Uh-huh.

6 THE COURT: What else?

7 MS. COLLINS: There are many examples. A lot of
8 them are individual people or items. There are lots of them.
9 I don't have a complete list here. Before trial we can
10 obviously go through that with defense counsel.

11 Some other examples I can give you right now is in
12 a communication --

13 THE COURT: Well, let me tell you what I'm having a
14 problem with with these generalizations.

15 I mean, Mr. Martin and you heard him say that in
16 the past he has stated that certain specific people are
17 members of certain organizations. That's an opinion which
18 would be based upon his research.

19 If he's going to express opinions, I think all
20 Mr. Martin is asking is tell me all the specifics. You keep
21 saying there is lots of them, and there might be groupings of
22 kinds of evidence that you intend to introduce, such as a set
23 of communications in which Mr. Ahmed or Mr. Sadequee talk
24 about Tibyan Publications, you can probably generally
25 describe that.

1 But I think there has got to be a more -- or a
2 specific articulation, which I think you haven't done yet,
3 even for the defendants as to what is the exact evidence or
4 the categories of evidence about which you seek to elicit
5 opinions from the defendant -- I mean, from the witness.

6 MS. COLLINS: Sure.

7 Another category of evidence are communications in
8 which they discuss Jihadist publications such as --

9 THE COURT: I'm going to tell you, if you are going
10 to do that now, you are going to be bound by it. So if you
11 happen to forget one or the other, this hearing is going to
12 be over and I'm not going to allow it.

13 So you need to -- I think the request that they
14 have made is fair. I haven't seen it, including in your
15 submission, which as early as this morning I have read,
16 doesn't do that for me.

17 This is a *Daubert* hearing in which we have taken a
18 flip, we have gone through his qualifications, which I guess
19 was the best thing to do, but ordinarily in a *Daubert* hearing
20 you say, here are the specific opinions that are going to be
21 offered by the witness, here is the -- and having stated
22 those, so that I can make a determination as to whether or
23 not he's qualified to express those opinions, and then
24 secondly, whether or not they are relevant to the issues in
25 the case.

1 But after those are expressed, then you state, now
2 having heard his background, what the basis is for those
3 opinions, so that I can enter an order to determine whether
4 or not one or more of those are offered or all of them are
5 offered.

6 But I think the thing to do is -- and what I would
7 expect and I think it's the government's obligation is to do
8 that, is to say -- I'm happy for you to do it today. I would
9 prefer it to be done today. But you need to list the
10 categories, or if they are not -- if you can't categorize
11 them, the specific pieces of evidence you intend to have him
12 express an opinion on, generally go over what opinion he's
13 going to express.

14 But when we are done doing this, that's going to be
15 what I'm going to allow, and if something is forgotten, it's
16 going to be excluded.

17 MS. COLLINS: Your Honor, then what we would like
18 to be able to do then is go through and we can compile a
19 list, I would be happy to do that and share it with defense
20 counsel for the specific either magazines, people, things
21 that the defendants and their co-conspirators either
22 possessed or talked about that we believe will be admitted at
23 trial and that we believe would need some type of contextual
24 statement.

25 THE COURT: So when is that going to happen?

1 MS. COLLINS: It cannot be right now. We will do
2 that as soon as possible.

3 May I have a minute to talk with my co-counsel?

4 THE COURT: Yeah.

5 MS. COLLINS: We propose that the defendants can go
6 on with whatever cross-examination they have on his
7 qualifications, methodology, the other parts of the *Daubert*
8 hearing, and perhaps after lunch we can come back with a
9 list.

10 THE COURT: Does that make sense to you,
11 Mr. Martin?

12 MR. MARTIN: This will be relatively short. I
13 might go to into LET. On other things I will reserve.

14 THE COURT: Okay.

15 -- -- --

16 CROSS-EXAMINATION

17 BY MR. MARTIN:

18 Q. Good morning, Mr. Kohlmann.

19 A. Good morning.

20 Q. Is that how you pronounce your name, Kohlmann?

21 A. Kohlmann, that's right.

22 Q. Mr. Kohlmann, as I understand it, you do not have any
23 graduate degrees other than your law degree; is that correct?

24 A. Well, yeah. But I did graduate work in the Graduate
25 School of Arts and Sciences in order to get that degree.

1 In other words, my degree, my law degree is premised on
2 course work I did both in law school and the graduate school.
3 So while that is my graduate degree, it's a little bit
4 disingenuous to say that it's only in law.

5 Q. All right. As I understand your testimony, you got a
6 J.D. degree; correct?

7 A. That's correct.

8 Q. And you got permission from the law school to get credit
9 for these courses that you were taking in Arts and Sciences
10 or wherever?

11 A. The Graduate School of Arts and Sciences, that's
12 correct.

13 Q. Toward your graduate degree in law?

14 A. That's correct, yes.

15 Q. But the simple answer to my question is that you do not
16 have a graduate degree in Islamic studies?

17 A. No.

18 Q. Islamic history or anything like that?

19 A. No, that's correct.

20 Q. You don't even have a Master's degree in that; is that
21 correct?

22 A. No, that's correct.

23 Q. And the thesis that you wrote was an undergraduate
24 thesis; is that correct?

25 A. It was an undergraduate honors thesis, that's correct,

1 yes.

2 Q. Now, with regard to the types of things that you do --
3 by the way, you got a certificate from the Center for
4 Christian Understanding at Georgetown?

5 A. Center for Muslim Christian Understanding.

6 Q. Muslim Christian, excuse me. And John Esposito is the
7 director of that program; is that correct?

8 A. That's correct, and the deputy director is
9 Dr. John Voll.

10 Q. And Dr. Esposito is somebody you respect?

11 A. Yeah, sure.

12 Q. He's a well-known expert in these areas; is that
13 correct?

14 A. He doesn't work in the same exact areas that I do, but
15 he is pretty well known. I mean, he wrote *The Oxford*
16 *Encyclopedia of Islam*, so --

17 Q. Right. Now, with regard to the type of work that you
18 do, as I understand it, you have basically -- you have
19 several different sources, and some of them we would call
20 secondary, some of them you would call tertiary, and then
21 there are a few that might be called primary sources; is that
22 correct?

23 A. Well, I don't know -- I don't know, numerically
24 speaking. But there are primary, and there are secondary,
25 and there are tertiary sources.

1 Q. For example, one of your primary sources would have been
2 your interviews with the two individuals that you spoke
3 with -- well, actually the spokesperson, Mr. Muntazir? Is
4 that how you pronounce it?

5 A. Abdullah Muntazir, yeah.

6 Q. Muntazir from LET?

7 A. Yes.

8 Q. I'm going to use LET for short because it's easier for
9 me to say referring to Lashkar-e-Tayyiba.

10 A. Of course.

11 Q. And you spoke with Mr. Ismail Royer?

12 A. Ismail Royer, that's correct.

13 Q. And those are the two primary sources that you had with
14 regards to LET?

15 A. Well, also we went to the camp. I physically didn't go
16 because I wasn't in Pakistan and I couldn't get there in
17 twenty-four hours, but my colleague went, drove down from
18 Peshawar to their headquarters in Muridke, filmed the whole
19 thing, and I have the video -- and I instructed him what to
20 do.

21 Now, the video includes not just the camp itself, but
22 also speeches given by Mr. Muntazir and other individuals
23 associated with LET.

24 Q. Now, that camp is right west of Lahore in Pakistan; is
25 that correct?

1 A. Approximately, yes.

2 Q. It's a 75-acre campus?

3 A. It's a very, very large campus. It's in a large plot of
4 land.

5 Q. It's an open and notorious site there in Pakistan?

6 A. Yes.

7 Q. It has an Olympic-size swimming pool?

8 A. When you say Olympic-size swimming pool, it has a
9 pool. It's not a small pool. To call it an Olympic-size
10 swimming pool, that might be overselling the case a bit.

11 Q. Horse stables?

12 A. It has stables, it has a pharmaceutical lab, it has a
13 chemical lab, it has a seminary, it has -- it's a
14 full-fledged complex. It has lots of different things, and
15 it's surrounded by a large barbed-wire fence.

16 Q. Dormitories?

17 A. Oh, yes.

18 Q. Offices?

19 A. Yes.

20 Q. Schools?

21 A. Yes.

22 Q. A large white mosque?

23 A. That's correct, yes.

24 Q. So it's a notorious place there. That's called the --
25 is the name it goes by, that camp or that opening,

1 Jamaat ud-Dawa?

2 A. Jamaat ud-Dawa is the name of the political link of
3 Lashkar-e-Tayyiba. It used to be known as Markaz ud-Dawa,
4 M-a-r-k-a-z ud-Dawa.

5 Now, they sometimes refer to the headquarters in Muridke
6 as Jamaat ud-Dawa, but it's just because the group that runs
7 it is Jamaat ud-Dawa.

8 Q. And that's known to be, as you say, the political arm of
9 LET; correct?

10 A. It's been designated by the United States government as
11 an official part of LET, not just the political wing, yes.

12 Q. Some people call it a front for LET?

13 A. I would call it interchangeable, an interchangeable arm
14 of LET.

15 Q. LET is a pretty open organization in Pakistan, is it
16 not?

17 A. What do you mean by open?

18 Q. It has a website?

19 A. That's correct, it did have a website.

20 Q. And that website was, what was it called,
21 *dawacenter.org*?

22 A. It's had lots of websites.

23 Q. Give us some of them.

24 A. *Dawacenter.org*, *Jamatuddawa.org*, there was a
25 *Taibacenter.20M.com*. They have been -- because of the fact

1 Markaz ud-Dawa changed their name because of the fact that
2 they were designated by the United States government, so they
3 changed their name to Jamaat ud-Dawa. So each time they keep
4 changing their name, they keep inaugurating a new website.

5 So they have had several different websites that they
6 have gone through. It's the same basic website. There was
7 also *tammacenter* or -- I can't even remember. There has been
8 bunch of them.

9 Q. And you collected those websites in your archives?

10 A. I have a complete archive of all of those websites.

11 Q. And there are telephone numbers --

12 A. Correct.

13 Q. -- that you could call LET.

14 If you wanted to get in touch with LET, here is our
15 number, call us, and we will answer the phone; right?

16 A. Correct.

17 Q. It doesn't take a lot of secret maneuvers to get to
18 LET? You could go to the website or call them on the phone?

19 A. That's why it's such a popular group.

20 Q. Let me ask you a little bit about LET's -- let me stay
21 with LET for a while -- LET's history and the history of the
22 Kashmir dispute between Pakistan and India?

23 A. Okay.

24 Q. Have you studied the history of that ongoing dispute
25 going back to the '40s?

1 A. Yes, but the majority of my research focuses on what's
2 happened since 1989.

3 Q. You do recognize that when the British left India, there
4 was a division between Pakistan and India between the Muslim
5 majority areas and the Hindu majority areas?

6 A. Yes.

7 Q. And that Kashmir was a Muslim majority area; correct?

8 A. I have not done a census myself.

9 I think the appropriate way of saying it is that Kashmir
10 is a mixed territory of Hindus, of Muslims, of Sikhs and
11 others, and that it's disputed, the control is disputed.

12 There are two regions of Kashmir, the Azad Kashmir,
13 which is Muslim majority, and Jammu Kashmir, which is
14 supposed to be Hindu majority.

15 I have never personally done a census, I couldn't tell
16 you which one is the exact majority, but again it's a mixed
17 population.

18 Q. Well, I'm talking to you as an expert. You studied that
19 subject --

20 A. Right.

21 Q. -- and the history of that dispute. Doesn't it grow out
22 of the fact that that was a majority Muslim area --

23 A. Again --

24 Q. -- at the time -- excuse me, at the time that the
25 British --

1 A. You are making judgments on --

2 THE COURT: Excuse me, you need to let him finish
3 his question before you answer.

4 THE WITNESS: I apologize, Your Honor.

5 BY MR. MARTIN:

6 Q. The British left India in 1947; correct?

7 A. Yes.

8 Q. I will back up a little bit.

9 And there were agreements at that time to divide that
10 country between majority Muslim areas and majority Hindu
11 areas?

12 A. That's correct.

13 Q. And present day Pakistan is a majority Islam Muslim
14 area; correct?

15 A. That's correct.

16 Q. Present day Bangladesh was the majority Muslim area
17 which was originally part of Pakistan?

18 A. Formerly known as East Pakistan, correct.

19 Q. And Kashmir was a disputed area, because even though it
20 was a majority Muslim area, India claimed it; correct?

21 A. Again, I would be careful, because I think you are
22 making historical judgments on issues that I don't think have
23 been fully resolved.

24 I think the proper historical way to put it is that
25 there is a mixed population of a significant number of

1 Muslims, if not a Muslim majority, and that the area
2 controlled by India, namely Jammu Kashmir, includes many -- a
3 large Muslim population.

4 So I think the way to put it is that India is in control
5 of a territory with a significant Muslim population. I think
6 that's the most appropriate way to put it.

7 Q. Let me ask you if you know this. Do you know who was
8 the Maharaji of Kashmir at the time in 1947 at the time it
9 was divided?

10 A. I have no idea.

11 Q. Do you know whether he was Hindu or Muslim?

12 A. I believe he was a Muslim.

13 Q. You believe he was a Muslim?

14 A. I don't know. I mean, I just said to you my focus of my
15 research on Kashmir was from 1989 forward. Obviously I know
16 of the wars that took place in '49 and the '70s, but the
17 focus is on what took place in the war from 1989 on.

18 Q. So you would concede to me that you are not an expert on
19 the area of the history of the Kashmir conflict dating back
20 to the '40s, how it started, what was the legal issues, what
21 were the majority populations, so forth?

22 A. I know the general outlines, but I keep trying to tell
23 you, the focus of my research is on transnational Jihadi
24 movements. There was no transnational Jihadi movement in
25 Kashmir prior to 1989. It didn't exist.

1 So I studied the Kashmir conflict as a corollary of the
2 propaganda and of the arguments put out by Islamists that are
3 fighting in Kashmir. But since there were no transnational
4 Jihadists fighting in Kashmir prior to 1989, the history
5 before then is not really -- it's not a focus of my research.

6 Q. All right, I understand. But you are aware that India
7 and Pakistan have fought several wars over the Kashmir --

8 A. Yes, I'm very familiar with the general outline of the
9 conflict.

10 Q. And that by 1972, there was what's generally called the
11 line of control that divides up Kashmir; correct?

12 A. The LOC, yes.

13 Q. It's not unlike North and South Korea, those types of
14 demilitarized zones over a disputed area; is that not
15 correct?

16 A. Approximately, yeah.

17 Q. I don't mean precisely, but there is a division -- both
18 India and Pakistan claimed that Kashmir should be part of
19 their own country; correct?

20 A. It's a disputed territory.

21 Q. And there is a dispute and wars over it; correct?

22 A. Correct.

23 Q. And currently there is what's called the line of control
24 where Pakistan controls basically the western and a slice
25 of -- the northern part and the western part, and India

1 controls the eastern and southern part of Kashmir?

2 A. Azad Kashmir is the Pakistani controlled part, Jammu
3 Kashmir is the Indian controlled part.

4 Q. And the northern, very northern part is basically in the
5 Himalayas, and there are Muslim tribes up there; correct?

6 A. It's controlled by the Chinese.

7 Q. There is also a dispute between India and the Chinese
8 about certain areas in this whole disputed area; correct?

9 A. Correct. There is a glacier that they have fought over.

10 Q. And you are familiar with the Pakistani Interservices
11 Intelligence Agency; correct?

12 A. The ISI.

13 Q. The ISI. And the ISI has been involved in supporting
14 guerilla activities over the years; is that not correct?

15 A. Where?

16 Q. Well, let's start with Kashmir.

17 A. Yes.

18 Q. And early days with the Mujahideen against the Soviets
19 in Afghanistan, that was a conduit for American support to
20 those people; is that correct?

21 A. Yeah, sure.

22 Q. ISI?

23 A. Yeah.

24 Q. And the ISI has notoriously also been linked with LET;
25 is that not true?

1 A. That's correct, yes.

2 Q. And that's a Pakistani governmental agency that has used
3 LET in its conflict or disputes over the line of control or
4 the whole province of Kashmir or the state of Kashmir?

5 A. Well, there hasn't been any definitive proof showing the
6 ISI role in Lashkar, but I think it is something that's been
7 so widely reported that it's fairly accepted that the ISI has
8 played some role in this, and senior individuals in charge of
9 the ISI have more or less acknowledged that they have
10 supported Islamic militant groups in Kashmir.

11 Q. Are you familiar with Musharraf?

12 A. Pervez Musharraf?

13 Q. Yes, former president of Pakistan?

14 A. Yes.

15 Q. And Musharraf, would he be someone who would -- let me
16 back up.

17 He was a military man when he came to power; is that
18 correct?

19 A. He was the head of the army, yeah.

20 Q. Head of the army. And he was later elected, but he
21 continued to be head of the army; is that correct?

22 A. Well, he installed himself.

23 Q. Right.

24 A. But he continued to be head of the army. He continued
25 to live in the army house in Rawalpindi.

1 Q. And Musharraf, if you are aware, has also been involved
2 through the ISI in using LET and other organizations to stir
3 up trouble in Kashmir for the advantage of the Pakistani
4 government?

5 A. Musharraf personally?

6 Q. Personally, through his government, if you are aware?

7 A. I think the answer to that is that it's possible, but
8 Musharraf also banned LET. The government of Pakistan I
9 believe in 2003 issued an official ban on LET.

10 Q. I understand. But there was a period of time in which
11 Musharraf was identified with ISI and LET, is that not
12 correct, before he banned them?

13 A. I don't know if you could draw a personal relationship
14 between Pervez Musharraf and LET.

15 If you are going to say that the ISI provided funding or
16 may have provided some kind of support or logistics to the
17 LET at some point, I would say that's probably true. If you
18 are saying that Pervez Musharraf played a direct role, I have
19 absolutely no basis of knowledge of that.

20 Q. You don't know one way or the other?

21 A. I don't believe anyone in this room has any way of
22 knowing that.

23 Q. But ISI at that time was an agency of the government of
24 Pakistan, which Musharraf was the president; correct?

25 A. That's true. But I think it's also fair to note here

1 that there have been many suggestions that Mr. Musharraf and
2 others in charge of the Pakistani government do not have full
3 control over the ISI.

4 So I think to say that because the ISI did something,
5 that means that Pervez Musharraf endorsed it, that's not a
6 real relationship.

7 Q. Do you -- you say you rely upon secondary sources such
8 as *The New York Times*?

9 A. No. Those would be tertiary sources.

10 Q. Tertiary sources, *New York Times*, reputable
11 publications?

12 A. Reputable ones, yes.

13 Q. Do you consider *The New Yorker Magazine* a reputable
14 publication?

15 A. It really depends who the writer is. There have been
16 articles written by colleagues of mine who, like, for
17 instance, Lawrence Wright I believe has written some stuff in
18 *The New Yorker* who is a very good writer. I know Larry
19 really well.

20 Others who have written articles in *The New Yorker* --
21 *The New Yorker* is not an academic publication, and it doesn't
22 have the same journalistic standards that *The New York Times*
23 and other publications do.

24 I would use *The New Yorker*, I would cite it in something
25 if somebody was interviewed in an original interview in

1 *The New Yorker* that said something that he hadn't said or she
2 hadn't said somewhere else. If there was a specific fact
3 that I believe was very credible.

4 But I think you have to be kind of more careful with
5 those kinds of source.

6 Q. Do you know who Mohammed Abbas is?

7 A. That's a pretty common name.

8 Q. Do you know a Mohammed Abbas who is a spokesperson or
9 leader of LET?

10 A. Not off the top of my head, no.

11 Q. You haven't ever interviewed him? He's also known as
12 Abu -- forgive me for my pronunciation -- Ehsaan,
13 E-h-s-a-a-n?

14 A. He's not the official spokesperson of
15 Lashkar-e-Tayyiba.

16 Q. He's a spokesperson?

17 A. He's not the official spokesperson.

18 Q. Who is?

19 A. Abdullah Muntazir.

20 Q. Chief administrator of the Dawa camp, Jamaat ud-Dawa?

21 A. Who is the chief administrator?

22 Q. Yes.

23 A. I off the top of my head don't know.

24 Q. Do you know if it's Muhammad Abbas or not?

25 A. As far as I know, no, but it's possible. I can tell

1 that he's definitely not the chief spokesman of Lashkar, he's
2 not the foreign representative of Lashkar.

3 I have the business cards of the chief spokesmen of
4 Lashkar because not only have I spoken with them, but others
5 who have spoken with them and have given me their contact
6 information. He was not one of them.

7 Q. So you have a business card?

8 A. Yeah.

9 Q. So somebody could just call that number on that business
10 card and talk to that person?

11 A. Yes.

12 Q. Okay. Is LET identified with any particular strain of
13 Islam?

14 A. Yes.

15 Q. What is it?

16 A. It's known as the school of Ahl-e-Hadith, the people of
17 the Hadith. Ahl is A-h-l.

18 Q. Can you give us any more information about that?

19 A. Sure. Ahl-e-Hadith is a particular sect of Sunni
20 Islam. Sunni is the majority version of Islam.

21 Ahl-e-Hadith are -- I guess you would call it, it's a
22 particular sect which is based in particular mosques in
23 particular regions, primarily in Pakistan. They have a --
24 I guess you would call it a fairly puritanical perspective.
25 It is very commonly associated by those in the Middle East

1 with another strain of Islam known as Salafi Islam.

2 It believes in terms of very kind of return to the
3 principles of the Profit and of the Hadith and of the
4 Quran. It also -- Lashkar has very strict prohibitions
5 against television, against drawing human figures.

6 This is one of the reasons why so few videos have been
7 produced by Lashkar, because they really have a very serious
8 issue with representations of the human form.

9 Q. Let me ask you one question regarding Tibyan?

10 A. Yes.

11 Q. As I understand it, you understand Tibyan to be a
12 website that essentially collects publications, articles,
13 lectures, whatever, that might be relevant to people
14 interested in Islam. And one of their services is that they
15 translate these things; is that correct?

16 A. That's one part of what Tibyan is.

17 Tibyan is two things. Tibyan is, number one, a
18 distribution site for translated materials from terrorist
19 organizations written by different Al-Qaeda commanders or
20 released by -- whatever it is. It's distributed by them.

21 And then on top of it, Tibyan also operated a discussion
22 forum, an online English-language discussion forum where
23 people come online who were supporters of these ideas or were
24 interested in these ideas and could discuss them, could
25 debate them, could debate specific topics.

1 One specific debate which got a lot of attention on the
2 Tibyan forum was a debate involving a user who called himself
3 C4 Explosive who was debating with other people about when
4 it's right to kill women and children and when it's not
5 justified to kill women and children.

6 This was a many, many thread argument of different
7 discussions and whatnot.

8 Q. So somebody who was interested in that subject could go
9 to that website and get a translated version of this article,
10 the one you just mentioned?

11 A. Well, the latter was a discussion forum that you have to
12 be a member of, you have to be a discussant, a participant
13 in.

14 If you are not a supporter of the ideas that are
15 involved in this, you will get kicked off, which is why I
16 wasn't a member.

17 Q. All right.

18 A. The other aspect, the fixed website where they are
19 distributing the stuff to anyone, yeah, that's available
20 publicly to anyone.

21 Q. And you have downloaded that?

22 A. I have a complete archive.

23 Q. And if it's in Arabic, it's already been translated for
24 you, correct, so you don't have to get it translated?

25 A. I don't know anything that Tibyan put out in Arabic.

1 Q. But there are other websites you can go to and find
2 Arabic type of information, lectures, articles, essays by
3 scholars or whoever; correct?

4 A. That's correct, yes.

5 Q. And then you would sometimes have those translated if
6 you thought they were of interest?

7 A. Yeah. I do what's called information triage. I go
8 through every single piece of information that comes off my
9 desk, and I get a rough Arabic or rough translation of
10 whatever it is. If it's in Arabic, Turkish, whatever.

11 I determine what the document or the video, audio,
12 itself is. If it is something that contains information or
13 appears to contain information which would be relevant to my
14 research which would be interesting and which I believe
15 others would have an interest in, I then give this to my
16 translator or my translators, whoever I'm working with, and
17 I say, Look, you know, we need this done, take a look at
18 this, see what's in this, come back.

19 Q. And if it was of interest, you would post it on your
20 website?

21 A. Not everything. I only post a small selection of stuff.

22 Q. But you post what would be called Jihadi type of
23 information on your website?

24 A. Not really. I take excerpts of materials and I
25 translate them, and frankly it's most the people that are

1 involved in this field. I carefully check the IP addresses
2 of people that visit my website. Most people involved with
3 terrorist organizations stay very far away from my website
4 because they are afraid of being tracked by law enforcement.

5 Q. All right. But you at least keep these items in your
6 archives; correct?

7 A. For law enforcement, yeah, sure.

8 Q. For whatever purpose, research purposes, law enforcement
9 purposes, your purposes; correct?

10 A. Yeah. But if I notice that somebody is downloading them
11 that shouldn't be, I report that information to law
12 enforcement.

13 Q. I understand.

14 Now, have you ever monitored a website called Jihad
15 Unspun?

16 A. Yes.

17 Q. Have you archived the information that you have seen on
18 that website?

19 A. Some of it.

20 Q. If there was an announcement of a video to be taken in
21 2004 about -- do you know who is the person who runs that
22 website?

23 A. Yes.

24 Q. What's her name?

25 A. Her name is Beverly Geisbrecht

1 Q. And does she have an Arabic name?

2 A. Khadija Abdul Qahar, I believe.

3 Q. And where is she presently?

4 A. She's presently somewhere in Waziristan, north Pakistan.

5 Q. Is she a hostage?

6 A. We don't really know. Supposedly she's a hostage, but
7 nobody really knows for certain.

8 Q. She's missing?

9 A. She's missing. She has recorded video with Taliban
10 operatives in Waziristan, and she claims to be a hostage.
11 However there is still some question about whether she's a
12 hostage, or whether or not she's engaged in some kind of
13 fund-raising activity on behalf of the Taliban.

14 Q. If in her website in 2004 she announced a project such
15 as making a video or some sort of film regarding -- would
16 that be something you would have preserved in your archives?

17 A. Probably not, because of the fact that I was mostly
18 focused on gathering original materials from original
19 organizations.

20 Jihad Unspun is a secondary organization. I collected
21 material from there, you know, on a certain basis. If I saw
22 something that was interesting, I got it. But that
23 particular -- what you are describing doesn't ring a bell.

24 Q. Doesn't ring a bell?

25 A. No.

1 Q. But it's something you could check?

2 A. Oh, yeah, of course, I would be happy to.

3 Q. With regard to -- oh, I wanted to ask you this about the
4 Taiba Bulletin.

5 A. Yeah.

6 Q. That's like a newsletter or something? Tell me what
7 that is?

8 A. It was an online newsletter which was disseminated over
9 primarily Yahoo! news groups. If you knew what
10 Lashkar-e-Tayyiba was and you wanted information about it,
11 you could sign up on this news group to receive a copy of
12 their newsletter. Their newsletter was disseminated in
13 Arabic, in English, and I believe actually also in Urdu.

14 It was an electronic newsletter with updates from
15 Al-Qaeda leaders, speeches by Abdullah Muntazir, speeches by
16 Hafiz Mohammed Saeed, and other senior Lashkar leaders. It
17 was their news wire I think is the best way of putting it.

18 Q. Now, with regards to your information on LET, their
19 purposes and motives and operations, that's based upon your
20 two interviews that you had with Mr. Royer and Mr. Muntazir?

21 A. Actually three interviews. I did two interviews with
22 Mr. Muntazir. I did an interview with Mr. Royer.

23 Go ahead, sorry.

24 Q. I'm just going on. You sent somebody to go take some
25 pictures of the camp?

1 A. Well, it's my employee, yeah.

2 Q. I didn't mean to minimize it. You sent somebody to take
3 some pictures.

4 A. Uh-huh.

5 Q. You have reviewed a video of the camp?

6 A. I have a video.

7 Q. You have a video of the camp?

8 A. I should be clear, so we are clear here, I had my own
9 video of the Muridke camp, and then I also have video of an
10 actual military, explicitly only military training camp run
11 by Lashkar in central Pakistan separate.

12 Q. How did you get that?

13 A. I obtained that from a colleague in Washington, D.C.

14 Q. So somebody in Washington, D.C., gave you a video and
15 told you this is a video of a training camp of LET?

16 A. I believe there are actually identifiable LET commanders
17 in the video. You can see their faces.

18 Q. You could look at these people's faces and identify
19 them?

20 A. I am pretty sure I know who one of them is. I can show
21 you the video and I can give you the guy's name and I can
22 show you a photo.

23 Q. Give me the guy's name?

24 A. I don't have it in front of me. I can show it to
25 you. I have the video. I have his name.

1 Q. So you have a video -- let me just understand
2 exactly. You have a video that some person gave you that
3 appears to be a training camp in which there appears --

4 A. It specifically says Lashkar-e-Tayyiba camp.

5 Q. It says on the video?

6 A. Yeah. It says Lashkar-e-Tayyiba camp, and it has
7 someone in the video who I recognize from other photographs
8 of Lashkar-e-Tayyiba leaders.

9 Q. I'm not fussing at you. I'm just trying to get the
10 basis; okay?

11 So there is a person there that you think you recognize
12 as a person --

13 A. I'm pretty sure it's him, yeah.

14 Again, everything that I know leads me to believe, not
15 to mention the fact that the tactics that are being shown
16 in the video are exactly verbatim the tactics that are
17 described in the Taiba Bulletin that are taking place at
18 their camps.

19 Q. Tell me exactly what you mean?

20 A. LET military camps are a little bit different from other
21 military camps. They focus on very specific things; right?

22 Al-Qaeda camps, there's a lot of stuff about explosives,
23 there's a lot of stuff about surface-to-air missiles and
24 whatnot.

25 LET camps are mostly focused on training squads of

1 fighters who can take over and hold particular I guess zones,
2 whether it's a building, whether it's -- whatever it is.
3 They are called fedayeen squads. It's a different style of
4 combat.

5 With Al-Qaeda, the operations that they carry out, the
6 martyrdom operations, known as amilyat istishadiya, the
7 martyrdom operations. With LET, they refer to their
8 operations as fedayeen or commando operations.

9 If you look at this video, to my mind and from reading
10 the very specific discussion of the tactics that LET trains
11 in their camps, as written by LET operatives in the Taiba
12 Bulletin, in their website, these are exactly the fedayeen
13 stuff that they are teaching.

14 And it's again slightly tweaked from what you
15 have seen -- from what I have seen in other videos of other
16 camps. I believe it's legitimate.

17 Q. Okay.

18 A. By the way, the name of the individual is Hafiz Adbur
19 Rehman Makki. The name of the individual that I believe
20 that's in the video, Hafiz Abdur Rehman Makki. H-a-f-i-z
21 A-b-d-u-r R-e-h-m-a-n M-a-k-k-i.

22 Q. Do you know who does the translations for Tibyan?

23 A. Specifically know? I have some idea of who, yeah.

24 Q. Who?

25 A. Well, you want me to give you specific names?

1 Q. Yeah.

2 A. Ahbid Khan. The other names I don't know.

3 Q. Okay. You don't know if they have more than one
4 translator?

5 A. I'm sure they do.

6 Q. They do a large volume of translations, don't they?

7 A. Well, not to mention the fact that after Mr. Khan was
8 arrested, they continued to release translations.

9 Q. Is Clear Guidance a website that you sometimes watch?

10 A. Yeah, I have a lot of material saved from Clear
11 Guidance.

12 Q. Tell us about that?

13 A. Clear Guidance was a website, discussion forum on the
14 internet, very similar to Tibyan Publications. In fact, you
15 could almost call it an exact mirror or substitute for Tibyan
16 Publications. Virtually the same conversations that were
17 taking place on the Tibyan Publications forum were also
18 taking place on Clear Guidance.

19 Clear guidance was run by two individuals, one
20 individual by the name of Sarfaraz Jamal, S-a-r-f-a-r-a-z
21 J-a-m-a-l, who is currently in exile in Jordan, and also
22 another individual, Daniel Maldonado, D-a-n-i-e-l
23 M-a-l-d-o-n-a-d-o, who is currently being held in a federal
24 penitentiary here in the United States.

25 Q. When you say you monitor these websites, does that mean

1 that you go on them every day?

2 A. Yes.

3 Q. Were you going to be doing that today?

4 A. Yes. I have already done it today.

5 Q. You have already done it today?

6 A. Yes.

7 Q. So you wake up in the morning and pull up the website
8 and see if there is anything new on there?

9 A. I check the websites literally every single chance I get
10 in front of a computer. The longest periods of time that I
11 go without me checking these sites are when I'm sitting in a
12 courtroom.

13 Q. And are you looking for changes on the websites? What
14 are you looking for? Are you looking for new information on
15 the websites?

16 A. I'm looking for anything. I'm looking for anything that
17 can teach me about what's going on on these sites, about what
18 discussions are taking place, material that's being traded.

19 I am interested, number one, in the organizations that
20 are using these sites to disseminate their material. So in
21 other words, I'm interested in the substantive detail that
22 can be learned about groups like Al-Qaeda in Iraq, about the
23 Taliban.

24 Number two, I'm also interested in the people that are
25 actually physically on these forums and that are talking with

1 each other and that are chatting and are sharing information
2 in what they are doing.

3 So again initially I got involved in these forums
4 because I was looking for information about these groups,
5 about the Jihadi groups, about the Mujahideen groups,
6 substantive information that I could use for my research
7 about the groups.

8 But as I got more involved in this, the people
9 themselves took on an equal level of importance.

10 Q. Now, with regards to your analysis of the information,
11 it's one thing to get information. It's another thing to
12 analyze it. Would you agree with me on that?

13 A. I agree, yes.

14 Q. That is based upon your undergraduate studies; correct?
15 I'm not finished. In part.

16 A. (Nods head.)

17 Q. Your graduate studies while you were in law school;
18 correct?

19 A. (Nods head.)

20 Q. A book you have written about Islam or Jihadi in Europe
21 or whatever it was, the one -- what was the name of the book?

22 A. Al-Qaeda's Jihad in Europe.

23 Q. And your work with the foundation, NEFA?

24 A. NEFA, that's correct.

25 Q. And what was the -- the group that was called --

1 A. Investigative Project?

2 Q. Yeah, Investigative Project, I wanted to make sure I had
3 it exactly right, in which you don't send anything out unless
4 it's been reviewed by the people already in the office;
5 correct?

6 A. Well, that's a standard -- that also applies to NEFA
7 and --

8 Q. It does?

9 A. Yeah.

10 Q. And that's the review process for those articles is to
11 look at them internally and you make sure that --

12 A. Well, it's not just internally. Again, because of the
13 fact that I deal with a collection of colleagues on a daily
14 basis, people that are in academic institutions, that are
15 practitioners and whatnot, and because of the fact that this
16 is a collective learning process, all of us are learning
17 together, one of the things that I do is as soon as I have a
18 draft of a paper that I'm working on, or a draft of anything,
19 I will immediately e-mail it out to dozens of different
20 people, people that are academics, people that are
21 practitioners, people from different perspectives.

22 And what I'm looking for there is feedback from them
23 about my analysis, about the sources that I have used, about
24 all of that.

25 And then I take their comments, and I help that to shape

1 the eventual final draft. Now, the final draft is then
2 reviewed internally. But it's important to understand that
3 because of the fact that I -- like I write for a blog that
4 has several other -- several other, it's ten other
5 contributors to the blog, all about CT issues.

6 So everything that I talk about, whether it's on the
7 blog or it's in private conversation, we are talking about
8 these issues constantly in the background, we are sharing
9 research, we are sharing papers.

10 Recently I passed my paper to a colleague in London, he
11 passed a paper he was working on back to me, he asked me,
12 Look, I'm working on something else and I need this piece of
13 research, I know you have it, I don't, can you send it to
14 me? No problem, I sent him that video. He sent me back
15 something else.

16 We exchange information. And the idea is is that by
17 doing collective review, hopefully everything here is being
18 carefully checked.

19 Q. I understand. And what's the name of your blog?

20 A. The Counterterrorism Blog.

21 Q. Counterterrorism Blog?

22 A. It's not my blog. I'm a contributor to it.

23 Q. You are a contributor. It's called Counterterrorism
24 Blog?

25 A. Yes.

1 Q. With regards to your finding these websites, you do this
2 daily, are you looking for new websites?

3 A. Yes.

4 Q. How do you do that?

5 A. I participate in discussions with people -- or I
6 shouldn't say participate. I watch conversations,
7 discussions of people on sites that I am already on talking
8 about, Hey, there is a new site, check this out.

9 Because there is a saying out there, there is ten
10 thousand terrorists websites out there, and that might be
11 true, but there is only about five or ten or fifteen that are
12 really significant.

13 And just because you have a website up somewhere that
14 says something doesn't mean anything. It's much more
15 significant if you have a website and meanwhile you have all
16 these people who are saying, Hey, this is great, let's go
17 there, let's get this. That's a website you want to pay
18 close attention to.

19 If you have another website just hanging out in midspace
20 and nobody is visiting it, it could have all the most
21 wonderful things in the world, but it's probably not that
22 interesting because nobody is looking at it.

23 Q. And you say you are a computer savvy person?

24 A. I used to be a computer programmer, yes.

25 Q. How old are you?

1 A. Now I'm 30.

2 Q. 30, just turned 30, so you grew up in the age of the
3 internet; correct?

4 A. I don't know if I just turned 30, but I grew up in the
5 age of the internet, that's definitely true.

6 Q. And younger people tend to be able to use this as a
7 device to find all sorts of websites; correct?

8 I will withdraw that.

9 A. The only reason I would be careful of generalizing it is
10 because a very good friend of mine, Reuven Paz, who is in his
11 70s or later, and he's an old guy, and he is more computer
12 savvy than me.

13 Q. I only mention it because you mentioned it originally.

14 A. It's true, though, the internet --

15 Q. So you look at these websites, people are talking about
16 other websites, a computer savvy guy goes quickly to that
17 website, which may lead you to another website. So you are
18 sitting up in Dawsonville, Georgia, or at Georgia Tech
19 University on a computer, you can get access to these things
20 fairly easily?

21 A. Only if you have a log in and a password.

22 Q. But to get to the website, you find a website and you
23 get in?

24 A. You have to have a log in and password.

25 The only reason I have a log in and password for these

1 sites is because I have been doing this for so long that I
2 was around when these websites started up.

3 So when they first began back in 2003, I was an early
4 adopter, that's the way of putting it. And in the early
5 beginning it was kind of difficult for them to tell exactly
6 who was who. So I snuck in, snuck in.

7 But to give you some idea of how difficult it is if you
8 didn't sneak in early on, most people in law enforcement
9 don't have access to these sites, or many people in law
10 enforcement don't have access these sites. Many people don't
11 have access to log in and passwords.

12 I have been asked by law enforcement to recover
13 particular posts from particular forums that are log --

14 Q. I'm sorry, go ahead. Sorry.

15 THE COURT: Mr. Martin? Mr. Martin?

16 MR. MARTIN: Sorry, I just --

17 THE COURT: No, no. You have to be careful because
18 the microphone will pick up your conversation.

19 MR. MARTIN: I'm sorry.

20 BY MR. MARTIN:

21 Q. I wanted to make sure -- my question wasn't very
22 precise.

23 A. Sure.

24 Q. You were talking about these online forums that you
25 have to -- to get in there, you have to have the log in

1 number?

2 A. Well, that's the primary way through which all of this
3 stuff is disseminated.

4 Q. But to get to the actual website where the translations
5 and the publications -- for example, in Tibyan, you don't
6 need to have a log in?

7 A. The Tibyan website that you are describing, the ones
8 with the translated materials, that's true, you didn't. But
9 that was one of only maybe three or four websites that you
10 didn't have to have a log in and password to access.

11 Jihadi groups, for example, Al-Qaeda in Iraq, everything
12 that Al-Qaeda in Iraq distributed was distributed through a
13 forum known as the Ansar forum, A-n-s-a-r. That's where
14 their stuff came through. You had to have a log in and
15 password to access it, and they weren't giving out log ins
16 and passwords unless there was some way for them to vet you,
17 i.e., for them to say you are a real Jihadi, okay, come on
18 in.

19 Q. So if somebody wants to get access, all they do is say,
20 I'm a real guy, and they vet you to some extent?

21 A. It's much more complex than that. It's usually what
22 happens is that what they do is they say, okay, if you want
23 to come on this forum, you have to be able to provide the
24 name and contact information for someone who is already on
25 here who we trust and who we know and who you know

1 personally. Not over the internet, but you know
2 personally.

3 And so what ended up happening was is that people
4 started having their friends come on by saying, you know, I
5 know this guy, he's a real Jihadi, but it's not easy.

6 And the guy who is running this was very paranoid about
7 security arrangements. And so he made it very difficult, and
8 he also -- they went through various different steps where
9 they would go through and try to clear out anyone that they
10 thought was a spy, anyone that they thought was a -- you
11 know, you had to be very careful.

12 Q. It's a simple question; if you can answer it simply, I
13 would appreciate it. In order to get into some of these
14 websites or these chat rooms, whatever, you have to show some
15 sort of credibility or some sort of creed with the Jihadi
16 movement; correct?

17 A. Most of time that's true, yeah.

18 Q. And that would be a way now to have access to something
19 you otherwise wouldn't have access to?

20 A. That's true, yeah.

21 MR. MARTIN: Your Honor, that's all I have at this
22 point. I reserve whatever --

23 THE COURT: All right, Mr. Samuel, Mr. Wahid?

24 MR. WAHID: Thank you, Judge.

25 -- -- --

CROSS-EXAMINATION

BY MR. WAHID:

Q. Mr. Kohlmann, let me start with asking a little bit about your sources and methodology?

A. Of course.

Q. One of the things that you said is that you look at the items on the website, you watch videos. Just now you were talking about other web sites where there are discussions going on. Are you also looking at those discussions?

A. Well, it's one in the same. What will happen is that, for instance, say Al-Qaeda in Iraq will go on a discussion forum that they have particular access to and they will post say a new video, or somebody will post it officially on their behalf.

What you have is, first of all, you have the message where people are downloading the message. And then the forums offer you the opportunity to issue a reply, to write your own reply. So you can then below their first initial message, then you can write another message, a reply.

So if you see the initial message, you will automatically see the first like 25 replies. So basically every single time that I went on and I saved a copy of a communique or a link to a download video, that naturally also included discussion among people who are watching the video, yeah.

1 Q. So obviously you download the video; you talked about
2 that. And then the discussions that you are looking at are
3 only the discussions related to the video. Is that the only
4 discussions you would look at?

5 A. No, no. That's the other thing is that the forums
6 themselves are divided into specific rooms. You have one
7 room which I call the Jihad data section, the communiques,
8 videos. In order to post in that section, you have to be an
9 authenticated real organization. In other words, I can't go
10 in there and post something. You have to be the official
11 representative of Al-Qaeda here, the Taliban here, and you
12 have to be able to prove it.

13 Q. You can go in and look at it. You can't post, but you
14 can look at it?

15 A. You can look at it, exactly.

16 The other rooms involved are like general discussion
17 rooms, there is a religion room. I very aggressively also
18 monitor the other rooms as well because of the fact that the
19 official stuff all comes through here, right, but there are
20 some unofficial things that trickle through.

21 Sometimes you will have an Al-Qaeda operative in Iraq
22 who will have gotten his hands on a copy of a video that
23 hasn't been released yet. It is about to be released, but it
24 hasn't been released. And he will post a message on the
25 forum saying, Hey, guys, look at this, it's about to come

1 out, check out this, and it will be on the general
2 forum. It's critical to be able to monitor those
3 conversations as well.

4 So what I do on daily basis is first I look at every new
5 post in the Jihad data section, then I go to the general
6 section, then I go to the video section, then I go to the
7 martyrs section; in other words, announcements of people who
8 have been slain fighting in combat recently. But I go
9 through each one, yeah.

10 Q. And when you are looking at these discussions, unlike
11 the video where you can identify who is in the video and is
12 it really in that area, are you familiar with having seen
13 that area, would the discussions -- you really don't know who
14 is posting those discussions; right?

15 A. For the most part, no.

16 Sometimes there are clues. There are people who will
17 have some piece of information or piece of product where it
18 didn't come from the official Jihadis, but clearly it's real,
19 clearly it's authentic, clearly they got it from somewhere.

20 Q. When you say clearly, why are you saying clearly?

21 A. Well, for instance, there was a group on the internet
22 known as the Islamic Media Center, and the Islamic Media
23 Center would disseminate stuff on these forums. It's a
24 general forum, right, and they would disseminate propaganda
25 videos.

1 They weren't the latest propaganda videos. They were
2 propaganda videos from ten years ago. Ten years ago; right?
3 So it wasn't like they got this directly from Al-Qaeda today,
4 but I know these videos. They are extremely rare, they are
5 extremely difficult to find. They are not available on the
6 internet, not until these people put them on there.

7 So how did they get their hands on them? Well, it's
8 possible they were really lucky, or more likely they had some
9 kind of access to a source for these videos.

10 In the case of the Islamic Media Center, what they did
11 is they went to Abu Hamza Al-Masri's mosque in the U.K. and
12 they got all the stuff out of his library.

13 So, yeah, that's I think a good example.

14 Q. And it would be fair to say that based on what you just
15 said, there is a certain amount of assumption that you have
16 to make when you are watching all this and you are making an
17 analysis, because you don't know -- like you said, you don't
18 know where they got it from.

19 It could have been just some guy left it lying around
20 somewhere and you walked into the room and there it was and
21 they said, Wow, look at this, this is cool, let me put this
22 on the web? You really don't know how he got it?

23 A. It's a process, it's over time. It's a process. You
24 analyze -- it's comparative analysis, it's exactly what I
25 have always been doing. You compare over time the material

1 that's put out by someone, you compare over time, and after a
2 while you can pretty much determine very conclusively whether
3 or not someone has real access to something.

4 Now, when I say real access, look, it could mean that
5 they are walking into a bookstore and they are buying the
6 stuff, not any bookstore obviously, but they have access to
7 something. But the point is is that you can quickly tell
8 what is authentic and what's not.

9 And the other thing is because of the fact that all of
10 the stuff is being distributed over discussion forums, if you
11 go on and you distribute a communique that's illegitimate,
12 you distribute a video that's illegitimate, not only will you
13 get kicked off, but you will get attacked. I mean, people
14 will go after you, because it's a very serious thing to
15 masquerade as something that you are not.

16 These people take that very seriously, and so, you
17 know -- again it's a serious thing.

18 Q. I don't want to cut you off, but what I'm asking,
19 though, is you would agree there is a certain degree of
20 assuming that you have to do in the course of your work?

21 A. I don't know if it's assuming. I think it's comparative
22 analysis. It may be an expert opinion.

23 But I think "assumption" is avoiding the fact that all
24 of this is based upon a daily analysis or rigorous analysis
25 of everything. It's the same kind of analysis that goes into

1 any kind of expert opinion.

2 Q. As you said on direct, there would be times where -- and
3 you didn't specify a particular time, but you were asked
4 would you change your opinion based on new information, and
5 you said yes?

6 A. Yes.

7 Q. And that's because certain assumptions you had made
8 prior would be borne out to be untrue, and therefore you
9 revised your opinion based on the new set of assumptions you
10 developed?

11 A. Yes. I can give a specific example.

12 Q. Yes, that would be correct, that's what I'm asking, that
13 process?

14 A. Look, again, I don't have any -- I don't have any
15 agenda. I'm nonpartisan. So if there is something that
16 comes up, a piece of evidence that clearly shows that
17 something that, you know, other evidence, you know, we have
18 got to be careful about this, I'm the first one to say
19 that.

20 In fact, with regards to Lashkar-e-Tayyiba, immediately
21 after the attacks in Mumbai last November, there were a load
22 of accusations that Lashkar-e-Tayyiba was responsible for
23 Mumbai.

24 And I immediately said, I said, look, it looks like
25 Lashkar, but that's not enough to say they did it.

1 So I called up Abdullah Muntazir, and he said, No, we
2 didn't do it.

3 And so in my article for *NBC News*, the headline was
4 Abdullah Muntazir denies LET had any role, emphatically
5 denies this.

6 Again, I am in this for the facts. I don't have any
7 partisan side. I'm nonpolitical.

8 Q. As we go towards the issue of your methodology, that's
9 what I'm really focusing on right now, part of your
10 methodology incorporates having to make assumptions, and then
11 you predicate an opinion based on those assumptions; correct?

12 A. Again, I have a problem with the word assumption. But
13 if you are saying that I am doing a comparative analysis and
14 I'm deriving a conclusion from doing a comparative analysis,
15 that's social science, yeah.

16 Q. Well, the example you gave about the video, it's not
17 really a comparison so much as you are saying you don't
18 know -- you have A, B, F, G. You don't know C and D, but you
19 can kind of piece together based on other situations what you
20 think happened with C and D?

21 A. I mean comparative analysis over time. Like, for
22 instance, the example that I gave, the Islamic Media Center.
23 They are issuing messages on a daily basis, and I'm
24 collecting all the messages and all the videos.

25 Now, if they distribute one original video or one

1 unusual video or one -- you know, you could draw a million
2 assumptions off of that; right? But over time, if you save
3 a hundred or hundred fifty communiques, ten different
4 websites, ten different training manuals, all this different
5 stuff, all these different videos, and it all matches up to
6 the same source, I wouldn't call that an assumption. I would
7 call that social science. I mean, that's basic -- you know,
8 that's basic comparative analysis.

9 Q. You would agree that someone could be posting on a
10 website or being part of a chat and in the Clear -- in the
11 Clear --

12 A. Clear Guidance.

13 Q. Yeah, Clear Guidance chat, he or she could be known
14 under one particular e-mail address or name, IM name, and
15 then on Tibyan Publications' website, he could be using a
16 different name, and it could be the same guy?

17 A. Yes.

18 Q. And similarly you would agree that five people could be
19 just sharing a particular e-mail address?

20 A. Yes.

21 Q. So the e-mail address can be *KhurruWahid.com* and ten
22 people can be using that e-mail address?

23 A. That's exactly correct, yes.

24 Q. So when you are reading the chats that are going on, you
25 really don't know who it is that's posting that chat. But

1 you just know -- you know the moniker of that person?

2 A. Right. When I -- unless I have reason to be able to
3 identify and say that that person is this person and they
4 posted it, no, no, no. And I'm very careful about that.

5 If I say somebody posted something on this date,
6 I identify that somebody with their user name. And I have --
7 you know, it's certainly true that in some cases you have
8 organizations which have one log in and would share two or
9 three different people.

10 There have been cases in Iraq where operatives in
11 Al-Qaeda in Iraq that had like ten IDs and say just take one
12 and use one of these while you are online here.

13 But most of the time these IDs become valuable because
14 of the fact that you establish credentials, you establish
15 notoriety. And so for a lot of people it's very important to
16 have their own user name and their own consistent user name
17 so that no matter what forum they are on, number one, they
18 are given a due level of respect by other users; number two,
19 that if they post something, somebody isn't going to say who
20 the hell is this guy; and number three, you know, they are
21 proud of this. A lot of these people are very proud of what
22 they are doing, and they are not -- they want to be known for
23 this.

24 Q. Let me ask you about authenticity. You gave an example
25 earlier where you said some of the stuff is self-evidently

1 authentic, and you gave an example of an Osama Bin Laden
2 release where you see him talking and he sitting next to
3 Zawahiri; right?

4 A. Yes.

5 Q. I mean, it would be true, though -- and correct me if
6 I'm wrong -- that the U.S. government often when those videos
7 come out, they originally don't comment, they say that we
8 need time to check the authentication of this particular
9 person, the voice --

10 A. They may say that, but that's meaningless. They know
11 immediately when it comes out whether it's legitimate or
12 not. It's not difficult to tell.

13 Q. But there are official statements from the U.S.
14 government when those come out saying, Well, we need time to
15 analyze this video to determine whether it is really in fact
16 a message from Osama Bin Laden, and they are checking things
17 such as not just the voice itself, but to check to see what
18 is he saying and could this have been made months and months
19 ago, that sort of thing; right?

20 A. That's correct.

21 Q. So there is still some analysis that goes in, even when
22 it's Osama Bin Laden, just to verify the authenticity?

23 A. Oh, I think it's kind of obvious.

24 The first thing I do if I get a video from Bin Laden is
25 I get a transcript of it and I go through the whole

1 transcript.

2 Number one, you are looking for things that could
3 identify when it was recorded, because one of the biggest
4 questions about Bin Laden is is he alive or is he dead, does
5 he refer to things that have happened recently. But, I mean,
6 this is kind of basic stuff.

7 I think when they are talking about authenticating, my
8 understanding is they are talking about voice authentication,
9 they are talking about doing a scientific analysis, trying to
10 actually compare voices. However -- and I wouldn't discount
11 that, it's certainly necessary. But --

12 Q. But you don't do that yourself?

13 A. For those of us who have listened to enough recordings
14 of Dr. Ayman al-Zawahiri and Osama Bin Laden, their voices
15 are very recognizable. I can't say that I have a scientific
16 rigor of a software program to compare the wave lengths.

17 But number one, I have never encountered a recording
18 from Bin Laden that -- a new recording that I didn't believe
19 was legitimate; and number two, neither has the Central
20 Intelligence Agency nor any U.S. government agency that I'm
21 aware of. They have never come up with a new recording of
22 Bin Laden that has been released through official sources
23 which they then went back and were unsure of the authenticity
24 of.

25 Again, if you know Bin Laden's voice, if you know

1 Zawahiri's, if you know the voice of Abu Musab al-Zarqawi,
2 they are very characteristic voices. I mean, if you listen
3 to them over and over again, it's immediate, I mean, you can
4 recognize them.

5 Q. Do you speak Arabic?

6 A. Not fluently, no. But in order to study Islam, I had to
7 learn obviously quite a bit of Arabic vocabulary.

8 Q. So you know terms, but you couldn't put a sentence
9 together, that sort of thing?

10 A. I can put some sentences together. It's like, for
11 instance, I know Shahada, I know things like that. But
12 because of the fact that I'm dealing mostly with native
13 speakers, I try to get native speakers to do my
14 translation.

15 I can use my own Arabic abilities to do triage, sure,
16 and identify what people are talking about, you know, I can
17 identify subject of conversations, people they are mentioning
18 and whatnot, so I can identify if something is interesting to
19 me.

20 But for actual translation, I really feel that no matter
21 what language it's in, you really want to give it to native
22 translators.

23 Q. So when you are online and looking at the websites, are
24 you there with the translator with you at the time?

25 A. Yeah, he sits right next to me.

1 Q. So when you are listening to something, the translator
2 would say this is what it is, or is he saying this sounds
3 interesting? How does that work?

4 A. No, I will pull up something and I will listen to it or
5 I will see it and I will say, hmmm, what is this? I will
6 say, Come over here, take a look, say is this what this is,
7 they are talking about this, are they talking about this,
8 what are they talking about, what else did they mention, did
9 they mention anything about this aspect, et cetera. So,
10 I mean, he sits right next to me.

11 Q. Do you speak Urdu?

12 A. No, that I do not.

13 Q. Do you have an Urdu translator?

14 A. I have Urdu translators in Pakistan. I also have
15 Turkish translators in London. I have Pashto translators in
16 Pakistan. I have a network of different people in Pakistan
17 who I work with.

18 Q. When you are watching a video or you are in your office
19 and you are looking at a website with something that's Urdu,
20 do you have somebody there with you, or how do you know
21 what's on that?

22 A. No, in that case I have to send them a copy of the video
23 or a copy of the document, and then they get it back to me.

24 But unfortunately because of the fact that we deal with
25 Arabic, Pashto, Urdu, Turkish, Somali, a couple other

1 different ones, there is no way for me to have a translator
2 next to me that does all those languages. I have to focus on
3 the language that comes up most frequently, which is Arabic.

4 Q. Have you been to Pakistan?

5 A. Me personally, no.

6 Q. Have you been to Bosnia?

7 A. Yes.

8 Q. At the time you wrote your book, *Al-Qaeda's Jihad in*
9 *Europe*, had you been to Bosnia?

10 A. I was in Bosnia the same year I wrote my book.

11 Q. In part of, in preparation of the book, did you go to
12 Bosnia?

13 A. It wasn't for preparation of the book. It was for
14 preparation of something else.

15 I worked on behalf -- I worked on behalf of the Office
16 of the High Representative in Bosnia. I did a short-term
17 consultancy with them in Sarajevo. The reason that they
18 hired me to do that work was because they had read my book
19 and they believe that I had significant value to add to their
20 program.

21 Q. You talked about on cross by Mr. Martin, you talked
22 about *The New Yorker* and it not being an academic
23 publication?

24 A. Correct.

25 Q. Are you saying that you wouldn't therefore cite

1 something like *The New Yorker*?

2 A. I didn't say I wouldn't cite it. I just said I would
3 have to really carefully check what their sources are because
4 of the fact that it's not like *The New York Times*, it's not
5 something where I know the editorial process is so strict
6 that these facts are very -- unfortunately I know of several
7 *New Yorker* articles with very serious factual errors recently
8 about similar subjects as this. So that makes me kind of
9 reticent.

10 There was an article by Adam Gadahn that was in
11 *The New Yorker*, a very interesting article, but it also had
12 some very serious factual mistakes.

13 So the issue is that, hey, this is a very interesting
14 article, I wouldn't want to ignore it, but if I was going to
15 start citing facts from it, I would want to have at least a
16 reasonable belief that what the facts are that I'm citing,
17 the specific facts that I'm citing are actually accurate and
18 true.

19 Q. And how would you do that? Let's say you are citing
20 something from a website. How would you go about confirming
21 that what that website is saying is actually accurate?

22 A. Well, comparative analysis, number one. I would compare
23 it to other documents about the same subject from other
24 sources and see whether or not it matches.

25 I would attempt to contact the organization itself, for

1 instance, Lashkar or the Islamic Army in Iraq. I would just
2 interview the Islamic Army in Iraq. My question was that
3 there have been bombings in Baghdad recently, nobody knows
4 who has done them. Was it Al-Qaeda, was it somebody else?
5 Rather than try and guess at this, why not just call up the
6 insurgents or contact them directly and say, Look, I work for
7 a media company, I'm very interested in this, tell me, who
8 did this, who in your mind, who did this?

9 Their answer is their answer. I can't say it's 100
10 percent factually true, but in my research I will say, Look,
11 the Islamic Army of Iraq said this, Al-Qaeda said this, these
12 people said this. My conclusion based upon studying those
13 three accounts is the following.

14 Q. Your book has a number of cites in it, and there are
15 some claims in there, I just don't see the cites for
16 them. Maybe you know where they come from.

17 One of them in the preface you talk about there being
18 about five thousand Mujahids who are generally loyal to the
19 Afghan Jihad?

20 A. Right.

21 Q. Going through the book, there was no cite to that?

22 A. No, that is my own extrapolation from all of the
23 sources. I mean, that would be like reading my entire
24 bibliography.

25 I don't think that's a controversial figure,

1 though. I think the same figure has also been repeated by
2 individuals in the U.S. government as well.

3 Q. But that would be an opinion, though? That's your
4 opinion?

5 A. Well, it's an opinion, but I think it's been directly
6 repeated. I can try to find you a source, but I believe it's
7 been directly reported by senior figures in the U.S.
8 government publicly.

9 Q. A number of your sources -- I wouldn't say all, but a
10 large number of your sources in your book are what you have
11 referred to as tertiary sources?

12 A. Uh-huh.

13 Q. Such as *The Guardian*, which is a newspaper in London,
14 you know, *The Times*, which a newspaper in London. So your
15 book seems to have a large content of it predicated upon
16 reading the news and citing to what's already in the news?

17 A. No. My book was mainly focused on four or five
18 principal documents which I obtained directly from
19 organizations which told the story of the Arab Afghans in
20 Bosnia.

21 Number one, the video *Martyrs of Bosnia, Shuhadaa*
22 *al-Busnia*.

23 Number two, *Operation Black Lion*.

24 Number three, *Operation Badr*.

25 Number four, the various different materials put out by

1 Azzan Publications, including the biographies of all of the
2 foreign fighters who were killed there and their stories of
3 who fought there.

4 What I did is I wrote a draft based on those documents,
5 and then I realized, hold on a second, there is a lot of
6 other stuff that happened in Bosnia-Herzegovina other than
7 this small group of guys, and it would be very interesting to
8 take their perspective, the perspective of the Arab Afghans
9 as told through the *Martyrs of Bosnia, Operation Badr*,
10 *Operation Black Lion*, all these different biographies, and
11 contrast that with the views of western journalists and
12 others, UN, whoever, who were on the ground at the time.

13 Now, when you say large number, I think it depends the
14 way you read it. But I think you should understand that the
15 main basis for my book -- and if you watched the videos,
16 *The Martyrs of Bosnia, Operation Badr, Operation Black Lion*,
17 I think you will pretty much see that that is the basis for
18 the book. The book itself follows those videos very
19 carefully.

20 Q. Although the citations in the book -- and at the end of
21 every chapter, you have the citations that go to that
22 chapter?

23 A. Right. But again, I'm trying to do a comparative
24 analysis, so I don't want to just report one source for
25 everything.

1 So in several cases where there was a fact, which was a
2 very generic fact, or in some cases *The Guardian* -- I mean,
3 it happens that Bosnia was a war that took place in Europe,
4 so there were a bunch of European journalists that got
5 excellent access on the ground in Bosnia which you wouldn't
6 get today in Pakistan or Iraq.

7 They got original interviews with Mujahideen, they got
8 original interviews with people on the ground. For the most
9 part I was quoting people who were, you know, senior members
10 of the Bosnian military and others who were quoted in these
11 articles.

12 I wasn't citing them for the truth of what they were
13 saying. What I was citing was the fact that they were people
14 who were saying this and were being quoted by western
15 journalists as saying it.

16 The reason why I included all the footnotes was so all
17 the people can see this is where this comes from or if you
18 have any question about the source or if you have any
19 question about what's being said here, you know, go back and
20 look.

21 But, again, I think you really should understand that
22 the book is based upon Arab Mujahideen documents which
23 I obtained primarily from places in Europe focusing on the
24 history of the Arab Afghans in Bosnia, and everything else in
25 there was fleshing out detail that I had learned from there.

1 Q. I will draw your attention to one particular area I was
2 just looking for the source on. It was on page 85.

3 There is a statement you make, and here you are talking
4 about essentially some of the issues or some of the instances
5 that were going on at the time in Bosnia. And there is one
6 line here where you say they knocked over pews, and you are
7 talking about the -- about 30 Arab guerrillas. They knocked
8 over pews and other sacred symbols of the ancient church,
9 vandalized the historic and irreplaceable murals above the
10 main altar, and finally scraped off the faces of Jesus and
11 the Virgin Mary, another painting near the altar?

12 A. Yeah.

13 Q. And that is cite 75, which is citing to David Sheehan,
14 "The Road to Guca Gora," St. David's Relief Foundation, and
15 it's a website.

16 A. You can see the same thing in *Martyrs of Bosnia*. I
17 mean, it's in the video, you can see it. They are in the
18 church. You see them in the church. You see them doing --
19 the only reason I cited that is because of the fact that
20 I didn't want people to say, Well, the Jihadi said it, but
21 how do you know that it really happened.

22 Well, this was someone who was a physical eyewitness,
23 who went into the church after it was liberated or whatever
24 by UN forces, and who went there and physically saw the
25 evidence. Now --

1 Q. Did you speak to David Sheehan yourself?

2 A. No, but I have the video. I have the video of them
3 doing it. I mean, I have the video of the fighters in the
4 church doing this, knocking over the pews, writing on the
5 wall. I mean --

6 Q. Well, your account on page 85 gives a context to that,
7 and you are citing a witness, but really what you are getting
8 it from is a video clip you saw that somebody else put into
9 there, edited in, and a website link that talks about it.

10 A. No, no. I'm doing a comparative -- again, this is what
11 comparative analysis is. This is social science. You take
12 an original document, which is the video recording, which was
13 put -- which was created by Mujahideen, the Mujahideen
14 brigade in Bosnia, the official brigade. It's their official
15 publication, it was in one of their official videos. It's
16 not a secret video.

17 And I am comparing that and I am saying, Look, we think
18 this happened, they claim it happened, they have video of
19 it. Here we have an observer who was a western observer who
20 was unconnected with the Mujahideen who went in there and
21 observed the same thing.

22 Now, one account alone or one account alone is just one
23 account, but you take those two accounts together -- I mean,
24 there is no dispute that that happened.

25 What's more, you should be very careful, because in

1 working for the International Court of Justice at the Hague,
2 I also had the opportunity to review thousands of original
3 documents, original reports, memorandum and whatnot between
4 UN security agencies, the Army of Bosnia-Herzegovina, the
5 Muslim Army of Bosnia-Herzegovina, and other organizations
6 back during the 1990s.

7 In many cases I had information from those documents
8 where I couldn't cite those documents because they are not
9 public documents, but I know facts took place.

10 So it was a matter of trying to find other sources which
11 also described those same incidents. But these are from
12 original documents created by the Muslim Army --

13 Q. Have you seen *Martyrs of Bosnia*?

14 A. Have I seen the video?

15 Q. You have seen the video; right?

16 A. I could probably cite the script to you.

17 Q. And it's your contention that there are scenes of the
18 Mujahideen desecrating, vandalizing the Guca Gora?

19 A. I can show you -- I can give you time codes. It says
20 Guca Gora. It's not -- again, this is something that I have
21 dealt with in extreme detail, particularly that incident in
22 Guca Gora.

23 Q. And you are quite certain about that?

24 A. I will give you time codes, I will give you screen
25 shots, you can be the judge. I mean, you can see them

1 inside, you can see them in front of the thing, they are
2 cheering, they are knocking stuff over.

3 Again, if you want to see the video, I'm happy to
4 provide you time codes and screen shots.

5 Q. I'm not going to go through the whole book, but you
6 would agree with me that there are a number of cites.

7 I mean, you can deem what you -- in terms percentage and that
8 sort of thing, but there are a number of cites where you are
9 citing either websites or tertiary sources, as you call them?

10 A. Again, I would just -- I repeat to you to be careful
11 because of the fact that in working for the International
12 Court of Justice at the Hague and the OHR in Bosnia, I was
13 given access to a lot of information, some of which are
14 documents, original documents, very credible, that are not
15 public. I can't reproduce them.

16 However, I know the information in them, and I have
17 written about it at great length, and I have discussed it
18 with people in the Balkans and at the ICJ.

19 Now, it's true, it's factual. I wish I could use those
20 sources. I can't. I have a whole 80- or 90-page report
21 which is for the ICJ which is the same thing based upon Army
22 of Bosnia-Herzegovina original documents which they provided
23 to me. I cannot make those public, so I have to use the best
24 sources I can.

25 Now, I can tell you again those facts are backed up in a

1 tremendous amount of research, and I would be -- I would be
2 surprised if you could find someone to dispute what happened
3 in Guca Gora in June of 1993.

4 Q. Just so we are clear, though, in terms of the
5 methodology and how you collect them and how you research and
6 then publish, you are very comfortable relying upon -- tell
7 me if I'm wrong -- relying upon citing tertiary sources?

8 A. I'm not. I keep saying that, I'm not comfortable with
9 it. I do it in order to flesh out detail.

10 But in order to establish -- my primary sources, the
11 sources I rely on most are original recordings, video
12 recordings, audio recordings, communiques, magazines,
13 et cetera, put out by Jihadi movements.

14 Now, frequently those don't cover every aspect of
15 something going on in a conflict like Bosnia, which is
16 terribly complex, and the last thing that I want to leave
17 people with the understanding of was that the Bosnian War was
18 only about a group of fifty or hundred guys running around
19 central Bosnia killing people, because that's not what it was
20 about.

21 I wanted to give people a greater perspective of what
22 the conflict was about, who the players were, and what was
23 going on in the midst of all this stuff. So I had to use
24 other sources.

25 But again I think if you watch the videos, if you watch

1 those three videos, *Operation Badr*, *Operation Black Lion*, and
2 *Shuhadaa al-Busnia*, *The Martyrs of Bosnia*, you will see that
3 my book very carefully traces the account of the Mujahideen
4 themselves, and that the reason why I use secondary or
5 tertiary sources is in order to make sure that people
6 understand that this is an account which has been established
7 by facts, not just by the Mujahideen, but also by western
8 journalists, by independent observers, by law enforcement, by
9 anyone else who had an opportunity to observe this.

10 Q. You spoke on direct about the laborious review that goes
11 into the fact checking of something you publish?

12 A. Yes.

13 Q. You talked about the NEFA documents?

14 A. Yes.

15 Q. You have documents that you have put forth for NEFA on a
16 number of different individuals, some of whom are cases you
17 had testified in, some are not, some are cases you observed,
18 you know, ranging from cases here in the United States to
19 cases in the U.K. and other places; correct?

20 A. Are you asking if I published a lot of stuff through
21 NEFA? I published a lot of stuff through NEFA.

22 Q. Talking about all these individual cases, talking about
23 a number of cases?

24 A. Well, the stuff that I write for NEFA, I just write. If
25 it happens that a particular subject is relevant to a case

1 I'm working on, that's great, because I have information from
2 that case.

3 But I just published a huge paper with them about
4 Shabaab al-Mujahideen in Somalia. I'm not working on a case
5 involving Shabaab, I'm not hired by anyone to do this. I did
6 it because I have been collecting the research over the last
7 three years and I felt it was time to, you know, to write
8 something.

9 Q. Did you recently put out one on Kasam?

10 A. Kasam?

11 Q. A document on Kasam, did you put one out recently?

12 A. Kasam what?

13 Q. The individual whose case you were just testifying in up
14 in New York?

15 A. You mean Kassir?

16 Q. I'm sorry, Kassir.

17 A. The NEFA Foundation released a copy of my expert report,
18 but I didn't write -- I didn't write anything about that.

19 I just wrote my expert report, and after the case was already
20 adjudicated and Mr. Kassir was found guilty, then they posted
21 a copy of my expert report, yeah.

22 But that wasn't written for NEFA. It was written -- it
23 was the exact verbatim report that was submitted to the
24 court.

25 Q. And the documents that, if there is a document like that

1 that NEFA then publishes, do you get compensated for that?

2 A. No. I get -- they pay me to do work for them. I am
3 expected to do a lot of things. I don't get paid extra
4 money, and in fact, I don't get paid that much money. I get
5 paid money by them, but it's a nonprofit group, so they have
6 a limited budget. The idea is for nonprofit counterterrorism
7 research.

8 Q. Let's just talk about some of the terms that -- you
9 watched the videos, you studied terms in order to be able to
10 identify terminology for a jury; correct? I mean, that's one
11 of the things you do?

12 A. Yes.

13 Q. Would you say that there is a certain multiple
14 interpretation possible for some of the terms you define?

15 A. You would have to give a specific example, because I
16 can't think of one.

17 Q. When you say Islamicize, you have used that term a few
18 times.

19 A. I haven't used Islamicize once today.

20 Q. You used it once, but let me refer you to specific
21 spots. In your book on page 115, you say in spite of
22 vigorous efforts to Islamicize the not only Muslim Bosnian
23 population, and then you go into what that is, and
24 specifically you say that the locals could not be convinced
25 to abandon pork, alcohol or public displays of affection.

1 Is it your position that Islamicize means for
2 individuals to abandon pork, alcohol, public displays --

3 A. That should have really been in quotes. The idea was
4 that --

5 Q. The word Islamicize is in quotes.

6 A. What's that?

7 Q. The word Islamicize is in quotes. Not the whole
8 paragraph, but that word is in quotes.

9 A. It's in quotes in there?

10 Q. Yeah.

11 A. It should be, because that's the idea, because that's
12 not really -- that's not -- the Mujahideen came into Bosnia
13 with the idea that they were going to teach the Bosnians
14 about real Islam. In other words, Salafi hard-core
15 puritanical-style Islam.

16 Now, Bosnian Islam is much different. Southeastern
17 Europe is a confluence of many different cultures and many
18 different religions, and Bosnian Islam has a tradition of
19 being very moderate, of being very open to other faiths, and
20 to borrow it from other faiths, and also being fairly
21 liberal.

22 So there is a history of people in the Balkans who are
23 Muslims who are eating pork, drinking alcohol. It wasn't a
24 big deal.

25 These guys came in with the idea that, you know, these

1 poor Bosnians, they don't know anything about Islam, we are
2 going to teach them about real Islam. And so that's what
3 I meant by Islamicize.

4 But the idea is Islamicize, because they were already
5 Muslims, they were being converted to a different sect or
6 different view of Islam, or that was the idea anyway.

7 Q. So when you say a statement like that and you put
8 Islamicize in quotes, are you putting it in quotes because
9 it's not your term that you are coining, or are you putting
10 it in quotes because it could have multiple meanings?

11 A. No, I'm putting it in quotes because of the fact that
12 Islamacize without quotes would give the suggestion that
13 these people weren't already Muslims, and they
14 were. Islamicize by quotes, I mean their version of Islam,
15 their perspective of Islam, their reading of Islam. That's
16 what I mean.

17 Q. And would it be fair to say that there are other terms
18 like that that you would comment on that would -- where in
19 this situation, for example, your position is that the not
20 eating pork, for example, or abstaining from alcohol, those
21 things, are one particular version of Islam? Is that what
22 you are saying there?

23 A. Those are supposed to be key tenets of Islam; right?
24 But just because something says something, in the Bible, the
25 Quran, whatever document it is, that doesn't mean that all

1 Islamic sects or all Muslims follow that. And I think it's
2 kind of, to be honest, it's kind of arrogant to suggest that
3 it is. I think people follow the religion that they want to
4 follow.

5 It happens that in the Quran it says you are not really
6 supposed to eat pork, you are not supposed to drink
7 alcohol. The idea that Muslims don't eat pork and don't
8 drink alcohol is ridiculous. I mean, people do. It depends
9 how religious you are.

10 Now, in Bosnia the tradition was liberal Islam, it was a
11 liberal interpretation of Islam. It was we are Muslims, we
12 believe in Allah, we believe in the Prophet, have faith in all
13 this, but we just feel like these particular aspects -- the
14 same way a lot of Jews don't keep kosher, or a lot of
15 Christians don't go to church on Sunday, but they still
16 consider themselves Christian.

17 Q. Would you say, though, that there is -- there are terms
18 like that -- you just basically told me that there is, you
19 know, certain things that are considered tenets of Islam,
20 like no pork, no alcohol?

21 A. Right.

22 Q. And that the way you have characterized it there,
23 though, is you put it in a sentence where you are saying that
24 the Mujahideen who came at that time were trying to convert
25 or Islamicize or their brand of Islam by preaching those what

1 you just said were core tenets of their religion.

2 Would you be telling the jury that these particular
3 things are core tenets of a religion, are you going to get
4 into that sort of thing? How are you going to use the
5 characterization of some of these terms?

6 A. I wouldn't characterize what someone's version of Islam
7 is. That's not what I'm here for. I mean, people are free
8 to believe whatever religion they want to believe or whatever
9 sect of religion they want to believe.

10 Q. Obviously that's not --

11 A. I'm not going to make a judgment about what -- excuse
12 me, I'm sorry.

13 THE COURT: No, it was Mr. Wahid that interrupted
14 you as he continues to go down this track which is not very
15 productive. So let's try to get this wrapped up and go on to
16 something new.

17 A. I am not going to comment about what real Islam is or
18 what real Islam isn't. That's none of my business.

19 Q. You talked a little bit about the process of these
20 websites and why they exist. You said that to a certain
21 extent the idea is -- you said there were thousands
22 potentially of these websites out there, maybe ten, fifteen
23 that are of some significance?

24 A. Yeah. Approximately, yeah.

25 Q. And it would be of value for others to start saying,

1 Hey, look at that website; right?

2 A. Yes.

3 Q. Because it would give it significance, it would give it
4 credibility, it would make it more significant.

5 If you are trying to have your website one of those top
6 ten or fifteen websites, you would need other folks to start
7 getting the buzz out?

8 A. Yeah, sure. But it's mostly organic, though. This is
9 like -- it's like trying to make something the top of
10 Billboard Top 20. Unless you have a lot of people who
11 actually like the song, it's not going to go up there. No
12 matter how many people call in to American Idol, if they are
13 not a good singer, they are probably not going to win.

14 It's the same thing. You can try to push people to a
15 site, but if ultimately you don't have something on there
16 that's drawing people organically in and of itself, they are
17 not going to keep coming back.

18 Q. And the idea would be for these websites, they are
19 trying to get people to come to the websites; right?

20 A. Of course. Well, trying to get people? Who people?
21 They are trying to get people who are their supporters. They
22 are trying to discourage people who are not their supporters
23 from coming.

24 This is -- I mean, there is a very -- the thing about
25 the forums, you have to be kind of careful, because there are

1 some people who go on there and think that they can go on
2 there and start discussions, debating the fine tenets of
3 Jihad, Mujahideen and whatnot. Something to understand is
4 that these forums are social networks of people who for the
5 most part have very similar views.

6 If you go on there and you start expressing wildly
7 divergent views, you will get removed, you will get kicked
8 off. They don't accept that. They only accept the
9 proliferation of one particular viewpoint on these particular
10 forums.

11 It's not really surprising, because the forums are set
12 up with a pretty clear purpose. Again, if you start
13 expressing wildly divergent views, you are going to get
14 kicked off.

15 Q. Although there are divergent viewpoints in the chats.

16 A. Divergent to a degree. When I say divergent, I mean if
17 you go on to one of these forums and you start saying
18 terrorism is wrong or that killing people is wrong and stuff
19 like that, good luck to you.

20 If you go on there and say, Well, I believe in Al-Qaeda
21 and I believe in Bin Laden and all this, but under this
22 specific instance, do you really think we should still be
23 killing women and children, even then you would be risking
24 getting kicked off.

25 With that alone, people have gone on to these forums and

1 have expressed support for Hamas and have gotten kicked off,
2 support for Hamas, the reason being is because Al-Qaeda hates
3 Hamas, hates them, and is constantly attacking them.

4 So if you go on these forums and you say you are a Hamas
5 supporter, forget the fact that it's maybe a designated
6 foreign terrorist organization, forget all that, you are from
7 the wrong perspective, get out of here.

8 Q. You had interviewed Omar Bakri; is that right?

9 A. Yes.

10 Q. And he's essentially the Sheikh for al-Muhajiroun?

11 A. The founder.

12 Q. The founder. And the al-Muhajiroun perspective is one
13 of more of -- they are sort of seen as the big talkers in the
14 so-called Jihadist world and not really doing anything?

15 A. It depends. Some people feel that way. It depends
16 who.

17 There are some people who criticize Omar Bakri for
18 talking a lot and not doing a lot, but those people are also
19 maybe not aware of how many al-Muhajiroun members have
20 actually gone to Jihad front lines after being recruited in
21 the U.K. And I think if they did, they might have a little
22 bit of a wider perspective of that.

23 Q. But it's fair to say there is diversity of view within
24 the Jihad community?

25 A. I mean, people dislike each other for personal reasons.

1 I mean, when I interviewed Abu Hamza Al-Masri, he started
2 disparaging an Algerian Arab Afghan to me. That was one of
3 the reasons I --

4 Q. On philosophical grounds there is a difference of
5 opinion?

6 A. Mostly it's personal. There is some philosophical
7 differences, but I think you have to understand that just
8 like anybody else, personal disagreements play a huge role in
9 the arguments that take place.

10 Many times the disagreements are not so much
11 philosophical as they were personal, and they become embodied
12 in very, very nitpicking kind of things. But I think you
13 have to understand, these people are just like anybody else.
14 Personality disputes play a huge role in their social
15 networks, just as important as politics.

16 Q. You have reviewed -- you have seen the Tibyan
17 Publications website; correct?

18 A. Yes.

19 Q. You have seen the entire website?

20 A. Which website? Are you talking about the website for
21 distributing publications, or are you talking about their
22 forum?

23 Q. Well, which website did you see?

24 A. I have seen both. But the one I'm more familiar with is
25 the website to distribute publications, because I was only

1 observing Tibyan until it got locked. I didn't have a user
2 name on Tibyan, and because of the fact that I didn't know
3 anyone in the real Jihadi circle that would authenticate me
4 as a user, I couldn't get online. I tried several times, but
5 it wouldn't allow me.

6 Q. Have you drawn an opinion based on what you know about
7 Tibyan as to whether or not it was trying to get folks to go
8 out and commit Jihadist activity?

9 A. Yes.

10 Q. And what is your opinion on it?

11 A. Yes, it was.

12 Q. And why is that -- what is the basis of that opinion?

13 A. My basis of that opinion is, number one, the specific
14 things that they distributed, which specifically said
15 explicitly you cannot cater the conditions of Jihad to where
16 you live, i.e., Europe. You have to participate in Jihad,
17 holy struggle, violent holy struggle, no matter where you
18 live, whether it's in Europe or elsewhere.

19 Those kinds of specific instructions, I mean, you can
20 only take them in one way. Tibyan distributed explicit
21 Al-Qaeda publications translated into English. *Constants of*
22 *the Path of Jihad* written by Sheikh Yousef al-Ayyiri, the
23 founder of Al-Qaeda in Saudi Arabia, that book is the single
24 most influential book in terms of home-grown terrorism
25 networks on earth. It pops up in every single case. It's

1 extremely influential. And the version that pops up is not
2 the original Arabic language version, it's the English
3 translation by Tibyan.

4 The translation of the video *Battle of Omar Hadeed*,
5 which is one of the most famous videos of Al-Qaeda in Iraq,
6 would you believe that their English translation is more
7 prolific than the original Arabic version because they did
8 such an incredible job with it?

9 And they not only translated the thing, they even
10 translated the songs, the anasheed, the songs in the
11 background which are telling people go to jihad, go fight
12 people, blow them up.

13 The subtitles, one guy says, I want to say to anyone who
14 is watching this video, anyone who is watching this CD: It's
15 your obligation to participate in amilyat istishediya, the
16 martyrdom operations. It's your obligation, your personal
17 obligation to follow in my footsteps. I mean, that's -- it's
18 a pretty explicit message, I think.

19 Q. Did you get -- you did some work on Ahbid Khan's case?

20 A. That's correct, yes.

21 Q. Did you get a copy of what was known at MB-12?

22 A. Yes.

23 Q. And you have reviewed that disk?

24 A. Yes.

25 Q. Is that where you have seen Tibyan Publications, the

1 backup?

2 A. The backup -- yes, that's correct. The backup of their
3 forum, that's correct.

4 Q. I'm almost done.

5 You mentioned about Ismail Royer. You interviewed
6 Ismail Royer. Ismail Royer was, according to his own
7 statements, was the public relations person for LET; correct?

8 A. He was assigned by an individual in Pakistan to serve as
9 their American liaison. In other words, he went there to go
10 meet with them because he wanted to get training, and they
11 said to him, We don't really have anyone right now in the
12 U.S. You would be a great guy. Do you want to kind of act
13 as kind of our contact there?

14 Q. Did you also get any information from Mr. Royer that he
15 felt LET was essentially working -- was condoned by the
16 Pakistan government, it was okay to be part of LET?

17 A. I will double-check on that for you, I promise, but my
18 recollection is he didn't speak about that.

19 He was an American, so his understanding of what the
20 relationship between the Pakistani government and LET was is
21 probably -- that's probably not a good source of knowledge
22 for that sort of information.

23 Q. Well, it would be fair to say that when he joined LET,
24 he didn't think there was anything wrong with it because
25 there was so public of an organization in Pakistan?

1 A. Be very, very careful when you say that. The way that
2 he learned about LET was from a Saudi Al-Qaeda
3 operative. The way he learned about LET was from a Saudi
4 Al-Qaeda operative who gave him the phone number and address
5 of a camp in Pakistan, a Saudi Al-Qaeda operative.

6 Be very careful to say he didn't think there was
7 anything wrong with this. He knew that there was something
8 wrong with this. He just felt that according to his personal
9 philosophy, there was nothing wrong with it. Legally
10 speaking, I think he was pretty clear there was something
11 wrong with this.

12 Q. Well, based on your conversation with him, he told you
13 he didn't think there was anything wrong with it?

14 A. He didn't -- he never said that. He never said
15 that. My take on it was that from a philosophical
16 perspective he didn't -- he thought this was justified.

17 From a legal perspective, he never gave me an indication
18 at any time that he thought this was legal,
19 permissible. I think it was pretty clear from the fact that
20 he got the information from a Saudi Al-Qaeda operative, it
21 was probably not legitimate or legal.

22 Q. LET also put out press releases; right?

23 A. That's correct, yes.

24 Q. And in fact, when he was the communications person
25 there, he put out the press releases. There wasn't any

1 attempt to hide LET?

2 A. Who?

3 Q. Ismail Royer?

4 A. Ismail Royer didn't put out press releases, not that I
5 know of. Not that I know of. They were put out by LET
6 people in Pakistan.

7 He collected them on his computer or he had some on his
8 computer, but as far as I understand it, he never mentioned
9 to me that he had any role in producing LET propaganda.

10 MR. WAHID: One moment, Your Honor.

11 Nothing else, thank you.

12 MR. MARTIN: Your Honor, I had just two questions
13 I wanted to ask, or two areas.

14 -- -- --

15 RECROSS-EXAMINATION

16 BY MR. MARTIN:

17 Q. Do you know who Hafiz Mohammed Saeed is?

18 A. Yes, he's one of the founders. Lashkar-e-Tayyiba was
19 founded by a group of people, some of whom had fought in the
20 Afghan War of the 1980s, and some of whom were religious
21 clerics.

22 Hafiz was the cleric or one of the top clerics, and he
23 was basically taking over as head of the organization.

24 Q. And even though that organization has been declared a
25 terrorist organization by the United States and the Pakistani

1 government and the UN, he still preaches openly in Pakistan,
2 does he not?

3 A. Yes.

4 Q. And do you know who Hussain Haqqani is, H-a-q-q-u-a-i?

5 A. Q-q -- I'm sorry?

6 Q. He's the present Pakistani ambassador to the
7 United States?

8 A. I'm sorry, I'm not familiar with him.

9 Q. Have you ever -- do you read books about LET or --

10 A. Yeah, sure.

11 Q. Are you familiar with the book *Between Mosque and*
12 *Military* that he wrote --

13 A. No, I'm not familiar with that.

14 Q. -- about the connection between LET and the Pakistani
15 government?

16 A. I'm not familiar with that book.

17 Again, I think it's relatively clear that during the
18 1990s, there were contacts between the ISI and LET.

19 Q. That continued into the 2000s?

20 A. I would say that's probably true. I just would caution
21 you that there has not ever been any definitive evidence of
22 that relationship.

23 It's just -- there have been ex-ISI people who have
24 talked about that in abstract terms, but as far as I know,
25 there are no sources of information beyond the recollections

1 of a few ISI people. There is no documentary evidence.
2 I think that's the way to put it.

3 Q. But you are not familiar with this particular book about
4 that subject?

5 A. No, but again, if documentary evidence doesn't exist,
6 they can't have it either.

7 Q. But -- and maybe I will just phrase it just a little bit
8 differently. It is widely perceived in Pakistan, is it not,
9 that there is a connection between LET and the ISI?

10 A. I think it's assumed.

11 Q. Assumed, that's fair enough.

12 MR. MARTIN: Thank you.

13 THE COURT: Does it make sense now to take a lunch
14 break so that the government can put together their list?
15 And if so, how long will it take to do that?

16 MS. COLLINS: Your Honor, I think we understand the
17 Court's concern, as well as defense counsel's concern, and we
18 are very sensitive to that.

19 And I think what we would like, what we would
20 propose to do is have a chance to speak with defense counsel
21 and figure out exactly what level of specificity they need,
22 what it is they are looking for that will enable them to
23 proceed and do what they need to do in terms of
24 Mr. Kohlmann.

25 And then we can speak with Ms. Birnbaum to relay to

1 her what kind of our joint proposal -- or a proposal for how
2 to proceed.

3 THE COURT: All right. Well, I will say
4 this. I think that what was missing was a predicate
5 discussion about the matters on which Mr. Kohlmann will offer
6 opinions.

7 I think a lot of it has been covered today already,
8 but I think it's to make sure -- and especially in the
9 Sadequee case, I don't want to be in the position where there
10 is some expression by Mr. Kohlmann of some opinion and we not
11 have covered that or to have the lawyers for Mr. Sadequee
12 say, Well, look, we had no idea he was going to say that,
13 because that would be disruptive and it wouldn't be efficient
14 in the trial.

15 So what I want is everybody should leave here
16 today, including me, knowing those topics or categories of
17 topics that will be covered in the trials so that there is
18 awareness as to what the government is going to do and what
19 the defense ought to be required to respond to.

20 MS. COLLINS: Yes, Your Honor.

21 THE COURT: That's my goal.

22 MS. COLLINS: Thank you, Your Honor. We
23 understand.

24 THE COURT: So your suggestion is for us to wait
25 until we hear from you after you have had your

1 discussion. Is that correct?

2 MS. COLLINS: Yes, I think that would be hopefully
3 appropriate.

4 THE COURT: And that will be no sooner than an
5 hour, I assume.

6 MS. COLLINS: We would like to have the chance to
7 talk with them as fully as we need to.

8 THE COURT: All I'm saying is I can do something
9 for an hour?

10 MS. COLLINS: Yes, Your Honor. At least,
11 Your Honor.

12 THE COURT: And the people in the gallery can go
13 something for an hour because we will not be back any sooner
14 than one hour?

15 MS. COLLINS: Yes, Your Honor.

16 THE COURT: All right. Then we will be in recess
17 for an hour or more.

18 MS. COLLINS: Thank you.

19 (A recess is taken at 12:32 p.m.)

20 -- -- --

21

22

23

24

25

1 Wednesday Afternoon Session

2 May 20, 2009

3 2:49 p.m.

4 -- -- --

5 (In open court:)

6 THE COURT: I understand you have concluded your
7 discussions. How did they turn out?

8 MS. COLLINS: Yes, Your Honor, we did. Thank you
9 for giving us the extra time that we requested to do that.

10 We have spoken with defense counsel, and we have
11 produced a list that I would like to tender as Government's
12 Exhibit 3.

13 If I can hand this to Ms. Birnbaum?

14 THE COURT: You may.

15 MS. COLLINS: And we have discussed this list with
16 the defense, and we have reached agreement on most -- on
17 three parts of it, and we would like to put in additional
18 testimony about one of the sections. And I don't believe it
19 will be that lengthy, but we would like to put that in at
20 this time.

21 THE COURT: So the categories on which you are in
22 agreement are what?

23 MS. COLLINS: Categories I, Category II, and IV.

24 THE COURT: And what does it mean that you are in
25 agreement?

1 MS. COLLINS: There is -- they don't believe that
2 at this hearing they require any further testimony or
3 cross-examination on those topics. That's our understanding.

4 THE COURT: Is that correct, Mr. Martin?

5 MR. MARTIN: Yes. I mean, for example, on number
6 one, there is LET, we have already gone into in some detail.
7 There are some other organizations, he would give similar
8 type testimony regarding those organizations if it becomes
9 relevant.

10 I mean, we are not obviously conceding, they
11 haven't shown why Al-Qaeda, for example, is relevant. If
12 that becomes something that's relevant, it's not as big of a
13 problem in my trial without a jury, but that's what we are
14 agreeing to.

15 And the websites, it's similar. We understand
16 there are a couple more websites, and we understand the
17 nature of his testimony is going to be I looked at these
18 websites and this is what I see on them, basically.

19 And number four, the way that's described to us is
20 that in some of the communications, there will be a reference
21 to a person's name or a phrase, that he would say that's
22 somebody who is a sheikh somewhere or is a member of some
23 sort of group, and we understand that.

24 Number three becomes the real problem for us.

25 THE COURT: Well, does that mean that with respect

1 at least Categories I, II and IV, that you are agreeing that
2 he can be qualified as an expert on those categories?

3 MR. MARTIN: Yeah, for what it's worth, yes.

4 THE COURT: All right. And for Mr. Sadequee, is
5 Mr. Sadequee agreeing that Mr. Kohlmann with respect to
6 Categories I, II and IV is qualified as an expert on those
7 categories?

8 MR. WAHID: With the understanding, Judge, the
9 proffer the government has made, which is that he will really
10 just be defining terms, not really going beyond that. And we
11 have expressed our concerns to them about where we felt it
12 would be going too far. So we would obviously reserve the
13 objection at that time.

14 Otherwise we are okay with it.

15 THE COURT: All right. So the remaining question
16 is whether Mr. Kohlmann has a sufficient background to
17 testify with respect to Category III. Is that where we end
18 up today?

19 MS. COLLINS: I believe so, Your Honor.

20 THE COURT: Mr. Martin?

21 MR. MARTIN: And it also goes to we have seen those
22 two reports, and in those two reports, a lot of it tends to
23 be just fact stuff, not really opinion testimony. I went to
24 a trial, I heard somebody say something, that becomes a
25 hearsay problem.

1 So we don't know exactly what -- and I have
2 discussed that with counsel, I don't think they intend to go
3 that far. But we want to make sure that what he's giving is
4 truly opinion testimony and not as a fact witness.

5 MR. WAHID: In addition, Your Honor, basically if
6 it is fact, we need to know when is he speaking as a fact
7 witness so that we can make the hearsay objection, and when
8 is he speaking as an expert.

9 And then if he is speaking as an expert on those
10 areas, what is the expertise as to those areas. I don't
11 think we have heard that yet.

12 THE COURT: So because I am also trying to manage
13 my workload, does that mean that you are withdrawing any
14 objection to his testimony, and that you are agreeing that he
15 is qualified to testify with the reservations that if
16 something is not relevant or something might come up at trial
17 that you can object? But you accept him as an expert in the
18 Categories I, II and IV?

19 MR. MARTIN: That's correct.

20 MR. WAHID: Yes.

21 THE COURT: All right. Then let's move to the
22 matters concerning Category III. How do we want to start
23 with that?

24 MS. COLLINS: Your Honor, we can start with some
25 preliminary questions, if that's all right?

1 THE COURT: All right.

2 -- -- --

3 REDIRECT EXAMINATION

4 BY MS. COLLINS:

5 Q. Mr. Kohlmann, are you familiar with someone who uses the
6 name Irhaby007, and that's spelled I-r-h-a-b-y --

7 A. Yes.

8 THE COURT: Hold on. Here's a promise I made to my
9 court reporter over lunch. That I would make you slow down
10 and give some pause between a question and an answer.

11 MS. COLLINS: Yes, sir.

12 THE COURT: If I break that promise, I will be in
13 jeopardy.

14 MS. COLLINS: No problem, Your Honor. Let me say
15 that again slowly.

16 BY MS. COLLINS:

17 Q. Are you familiar with the user Irhaby007?

18 THE WITNESS: Your Honor, I apologize as well.

19 A. Yes, I am. In English that's translated as
20 Terrorist007.

21 Q. How are you familiar with that?

22 A. Irhaby007 was a user and an administrator on several
23 discussion forums. In fact, the primary discussion forums
24 which I was studying, researching and collecting information
25 from.

1 Mr. Tsouli began as a member on these forums,
2 essentially contributing, discussing. However, increasingly
3 he began to push himself into a role of assisting in the
4 distribution of propaganda produced by Jihadi organizations,
5 videos, audios, communiques.

6 In the beginning it was simply Mr. Tsouli taking these
7 materials and copying them for other people. However, at a
8 certain point it became clear that Mr. Tsouli's relationship
9 had progressed beyond merely being a follower and being
10 someone who was directly interacting with Al-Qaeda in Iraq.

11 In October 2005 -- excuse me, October -- yes -- no,
12 October 2004, excuse me, on Mr. Tsouli's message forum, the
13 designated representative of Al-Qaeda in Iraq posted a new
14 video of an attack, an IUD, and improvised explosive attack
15 in Iraq.

16 Within seconds, almost simultaneously a second message
17 appeared attached to that message written by Irhaby007 with
18 extra download links for this video.

19 Now, physically it would not have been possible for
20 someone to have replied to that message in the amount of
21 time -- it wouldn't have been possible for someone to read it
22 and reply to it. Clearly these two messages were posted as a
23 group together. So in other words, they were part of the
24 same series of messages.

25 A few lines down the representative of Al-Qaeda in Iraq

1 wrote a response, another response saying, God bless you
2 Irhaby007, you are near and dear to our hearts, and you are
3 providing us with a critical service.

4 And that caused people to -- people on the forum to go
5 crazy, because they all knew Irhaby007 as being someone who
6 is just like them, just a member on the forum, and now this
7 guy was somebody being congratulated by Al-Qaeda in Iraq and
8 apparently had a direct relationship with them in the sense
9 that he was publishing their original materials on their
10 behalf.

11 Several months later while pursuing Mr. Tsouli online,
12 I was looking at a website that he had created, and I found a
13 hidden directory that was not supposed to be public. And
14 inside of that directory was a makeshift website under
15 construction for Al-Qaeda in Iraq.

16 That website contained copies of publications that had
17 already been distributed by Al-Qaeda in Iraq over the Ansar
18 forum, this forum that I have been discussing, and it also
19 contained other materials which had never before been
20 released by Al-Qaeda in Iraq.

21 So clearly whoever was in charge of this or owned this
22 folder had access to material from Al-Qaeda in Iraq which had
23 not been publicly distributed.

24 Subsequent to that I was given access by British police
25 to communiques, e-mails, messages that they recovered from

1 the Ansar forum, messages that were being sent between
2 representatives of Al-Qaeda in Iraq and Mr. Tsouli and
3 others.

4 Mr. Tsouli from those conversations was operating as
5 matchmaker for Al-Qaeda in Iraq. In addition to providing
6 logistical services in terms of setting up a website or
7 helping to distribute their propaganda, what also was
8 occurring was that users on the Ansar forum who recognized
9 Mr. Tsouli -- or, excuse me, Irhaby007 and knew about his
10 relationship with Al-Qaeda -- it was an obvious
11 relationship -- would write to him and say, Look, I'm here,
12 I don't have any way to Iraq, I want to join the fighters,
13 I want to join the Mujahideen, help me get there.

14 And Mr. -- excuse me, Irhaby007 would essentially act as
15 the matchmaker, would broker arrangements for these
16 individuals so they could travel to Damascus, Syria, at which
17 point Irhaby would give their telephone number to an Al-Qaeda
18 recruiter there and they would then get picked up and brought
19 into Iraq.

20 At a certain point messages began to be posted on the
21 Ansar forum, the same forum, announcing the fact that large
22 groups of members of the Ansar forum were headed into Iraq
23 and were meeting up with each other in guesthouses. And that
24 when they discovered that they were all members of
25 Irhaby007's discussion forum, they all became very teary eyed

1 and happy and gleeful, because that was something very
2 serious. Everybody knew Irhaby007.

3 Q. There was a lot of information in that answer. I have
4 to break it down a little bit.

5 A. I'm sorry, no problem.

6 Q. One of the things you said is Irhaby007 was the
7 administrator of certain forums?

8 A. Yes.

9 Q. What forums was he an administrator of?

10 A. Well, he was a co-administrator on several forums, but
11 the most significant one that he was a co-administrator on
12 was Muntada al-Ansar. Muntada in Arabic means forum,
13 al-Ansar means the partisans or supporters. And this website
14 explicitly was a forum for supporters of Jihad.

15 And so Mr. Tsouli again was a very active discussant and
16 active poster on this forum.

17 Q. How do you know that he was an administrator?

18 A. Well, because he was able to edit other people's
19 messages. In several cases, videos or communiques would be
20 posted by Jihadi groups, and then there would be a notation,
21 an automatic notation that the forum software automatically
22 puts in there saying this message was edited by Irhaby007.

23 Now, ordinary users can't edit other people's
24 messages. The only person that can edit other people's
25 messages is someone what is known as a super user or an

1 administrator account.

2 Q. How -- were you monitoring the Muntada al-Ansar at this
3 time?

4 A. I monitored Muntada al-Ansar from February of 2004 until
5 it finally went offline for good in October of 2005.

6 Q. Now, the second thing I want to touch on is you
7 throughout your statement, you have equated Irhaby007 with
8 Mr. Tsouli. How do you know that?

9 A. I apologize for that. The reason that I know that is
10 Mr. Tsouli -- excuse me, Irhaby007 was using one particular
11 forum and left a message there but was not obfuscating his
12 internet protocol address; in other words, the location where
13 he was accessing the internet from.

14 This address became known to British police, at which
15 point British police traced this IP or internet protocol
16 address back to a small flat in London, at which point they
17 launched a raid on the flat.

18 When they got to the flat, they found Mr. Tsouli at his
19 computer constructing a website called Youbombit! And they
20 discovered on Mr. Tsouli's computer all of the information
21 regarding Irhaby007.

22 I should add as well, following Mr. Tsouli's arrest,
23 Irhaby007, the name, the moniker disappeared, and everyone
24 has pretty much acknowledged online that Mr. Tsouli is
25 Irhaby007.

1 Q. Now, when you are talking about the first part of your
2 explanation of who Irhaby007 was and what he was doing, you
3 said that he was -- that there were messages that -- there
4 was a message by the designated representative of Al-Qaeda in
5 Iraq, and it was immediately followed and grouped with
6 another posting by Irhaby007?

7 A. That's right.

8 Q. How do you know that the poster was the designated
9 representative of Al-Qaeda in Iraq?

10 A. In the late spring of 2004, internet websites were
11 getting a very big reputation as being the go-to places to go
12 for Jihadi information. However during that time period,
13 there were several communiques that popped up which were
14 attributed to be Abu Musab al-Zarqawi in Iraq and went under
15 various names like the Talhid Islamic movement, similar to
16 what Zarqawi's organization was, but not the same. And they
17 were posted on internet discussion forums, and they were not
18 legitimate messages.

19 And so what Al-Qaeda did, Al-Qaeda got upset, Al-Qaeda
20 in Iraq became upset by this, these fake communiques. So
21 they issued a statement and they said, Look, they said, it
22 should be obvious to everyone by now, but if it's not obvious
23 we will be very explicit about it. The only person who is
24 the authorized distributor for our material is the head of
25 our media wing, Abu Maysarah al-Iraqi. If it doesn't come

1 from Abu Maysarah al-Iraqi, it's not from us, it's not
2 legitimate.

3 So this was another big clue that what was going on on
4 the Ansar forum was the real deal.

5 I should add, Abu Maysarah, Abu Maysarah al-Iraqi was
6 only on the Ansar forum. There was no Abu Maysarah on any
7 other forum. And these statements were given great
8 credibility, not just by myself, but by everyone else
9 involved in studying this, following this, and frankly in the
10 people that liked that stuff.

11 Q. And those postings were clearly designated being from
12 this individual Abu Maysarah al-Iraqi?

13 A. Yeah. Up until November of 2004, every single video,
14 every single communique from Al-Qaeda in Iraq was
15 specifically personally posted by Abu Maysarah al-Iraqi.

16 Q. And the forum that these were posted on were what, the
17 one you mentioned before?

18 A. Right, the Muntada al-Ansar forum.

19 Q. Now, after you discussed the two postings that were
20 grouped together, one by Abu Maysarah al-Iraqi, the other one
21 by Irhaby007, you said that there was another Al-Qaeda in
22 Iraq person who posted something about that.

23 I'm not sure that I understood what you meant by that.
24 Could you explain that again?

25 A. I'm sorry.

1 Q. Or did I get that wrong?

2 A. I think you may have gotten that wrong.

3 Q. Okay. Well --

4 A. Sure, I think I was explaining that essentially what
5 happened was that you had an initial message posted by
6 Maysarah with a link to a video. Then attached to that,
7 because it was literally issued within seconds, it was
8 simultaneous basically, from Irhaby007 with an extra series
9 of download links.

10 And then people started writing messages back saying,
11 Oh, thank God, you know, Allahu Akbar, God is the greatest.
12 And then a few messages down in the same thread of messages,
13 Abu Maysarah posted another message.

14 And it's important to understand that Abu Maysarah is
15 only posting communiques and videos for Al-Quaeda in Iraq.
16 He's not a discussant, he's not someone who is going on and
17 discussing, chatting with people. He's posting the messages,
18 posting communiques, and that's it.

19 And then all of the sudden he writes his first ever
20 noncommunique, nonvideo message, which essentially says,
21 Irhaby007, you are the greatest, may God protect you, you are
22 playing an essential role for us.

23 And for someone whose job it was to disseminate
24 communiques and videos, to write a personal message directed
25 at Irhaby007 publicly, that was huge. No one ever was given

1 that honor, before or afterwards, never.

2 Q. So just so I'm clear, the Abu Maysarah, who posted this
3 personal message publicly about Irhaby007, is the same
4 Abu Maysarah al-Iraqi who was posting the communiques, it was
5 the same user name?

6 A. Exactly, exactly. The exact same user name.

7 Q. Going on to the second part of your testimony where you
8 talked about finding a hidden directory, what site did you
9 find that on? How did you locate that?

10 A. Essentially what was going on was that in order to
11 release video recordings, Al-Qaeda in Iraq video recordings,
12 again what they would do is they would post the message on
13 the Ansar forum, Abu Maysarah would come on and post a
14 message saying here is a new video, here is what is in it,
15 signed Al-Qaeda in Iraq.

16 But all of the sudden I noticed that the links to
17 download the video, instead of being hosted on websites like
18 *Yousend it.com*, which are like free file-transfer sites, so
19 if a file is too big to attach it to an e-mail, you put it on
20 this temporary site and just include a link, people click on
21 the link and they download it, all of the sudden the links
22 were all going to the same domain but what was a private
23 posting domain. In other words, like a private web posting
24 account that someone had set up.

25 This wasn't a free hosting service. This was a

1 commercial hosting account, and it was the same account every
2 time where the videos were being hosted.

3 So I looked into the folder, and I discovered that in
4 that folder, there was an archive of dozens and dozens of AQI
5 video recordings. So then I started poking around elsewhere
6 in that folder where all these video recordings which are
7 being advertised by Abu Maysarah and distributed on the Ansar
8 forum are being hosted, and this is what is known as the
9 AQCORPO account.

10 This web hosting account was registered under the name
11 AQCORPO, short for AQ Corporation, or Al-Qaeda
12 Corporation. The idea behind this website was it was going
13 to be the home page for Al-Qaeda on the internet -- Al-Qaeda
14 in Iraq on the internet.

15 So they included magazines, links to videos, propaganda
16 posters, you name it. But this was all stored in that same
17 folder which was being advertised, files which were being
18 directly advertised by Abu Maysarah al-Iraqi.

19 Q. On Muntada al-Ansar?

20 A. Right, exactly.

21 Q. How do you know that that folder that you are talking
22 about that was registered as AQCORPO, how do you know that
23 that was linked to Tsouli or or Abu Maysarah?

24 A. It's my understanding -- I can double-check this, but I
25 believe there were also files which were being uploaded by

1 Mr. Tsouli into the same folder and being linked to download
2 for other people.

3 So in other words, it was a commercial hosting account
4 under the name AQCORPO which was serving for commingling of
5 files which had clearly been edited by Mr. Tsouli, and also
6 files which were original video and audio recordings from
7 Al-Qaeda in Iraq.

8 Q. Now, you mentioned when you were talking about this
9 earlier about some of the materials that you found in that
10 folder. How do you know that certain materials were not --
11 had not been released yet?

12 A. Well, because I have collected every single thing that
13 Abu Maysarah al-Iraqi has released ever since they started
14 releasing stuff on the forum.

15 From doing this, I have a complete archive of virtually
16 every single video recording, audio recording and communique
17 that has ever been released by Al-Qaeda in Iraq, Abu Musab
18 al-Zarqawi, or any of his affiliates, period. I have a
19 complete archive of all of that stuff.

20 And in some cases in the very beginning they were
21 actually numbered, so it was kind of easy to tell, number one
22 is number one, number two is number two, if you are missing
23 number three, you are missing number three.

24 Q. Does this link back up to your testimony earlier about
25 representations that only this individual, this Abu Maysarah

1 al-Iraqi, would be promulgating items from Al-Qaeda in Iraq?

2 A. Yeah, I mean, that's true, because up until late, very
3 late in 2004 when they started expanding their distribution
4 operation, there was no such thing as an official release
5 from Al-Qaeda in Iraq that was not released by Abu Maysarah
6 al-Iraqi.

7 Anything that came out supposedly from Zargawi, a
8 statement or whatnot, that didn't come from him, it was
9 quickly shot down in the forums, not just by Tsouli or
10 Irhaby007, but by other users who said, Hey, that's not
11 Abu Maysarah al-Iraqi, that's not legitimate, delete that
12 message.

13 Q. And at this time --

14 MS. COLLINS: May I approach the witness?

15 THE COURT: You may.

16 MS. COLLINS: Your Honor, I have just placed before
17 the witness Government's Exhibit 4.

18 BY MS. COLLINS:

19 Q. Do you recognize that?

20 A. Yes.

21 Q. And what is it?

22 A. This is a copy of an expert report which was solicited
23 by the SO-15 Counterterrorism Command in Scotland Yard which
24 I wrote regarding the AQCORPO website which I have just been
25 discussing.

1 MS. COLLINS: Your Honor, at this time we would
2 admit for purposes of this hearing Government's Exhibit 4.

3 THE COURT: Any objection?

4 MR. MARTIN: No.

5 MR. WAHID: No.

6 THE COURT: All right. It's admitted.

7 BY MS. COLLINS:

8 Q. In that report that's Government's Exhibit 4, do you
9 discuss some of the things that we have just been talking
10 about in terms of the creation of your location of this
11 directory, the creation of the AQCORPO account, and the files
12 and folders that were -- and the materials that were located
13 there?

14 A. Yeah, I was just going to say the one thing that's in
15 here that I forgot to mention is the other reason that we
16 knew that the AQCORPO account was controlled or created by
17 Irhaby007 is when Al-Qaeda in Iraq videos began to be posted
18 from that directory, there was actually written in English on
19 the message: With the compliments of Terrorist007,
20 Moheb al-Shaykayn and Abu Maysarah al-Iraqi.

21 Q. And that was -- just so I'm clear, that was written on
22 what?

23 A. On the message where the link was to a video hosted in
24 this -- again, so you can go on the forum, new message, the
25 message is posted by Abu Maysarah al-Iraqi or eventually

1 other Jihad correspondents took over responsibility for
2 posting, and in this there is an explanation of what the
3 video is and the link to download it, and the link is hosted
4 in the AQCORPO website.

5 And at the bottom of the message it actually says in
6 English: With the compliments of Irhaby007,
7 Moheb al-Shaykayn, who is the other administrator of the
8 Ansar forum, and Abu Maysarah al-Iraqi, who is again
9 representative of Al-Qaeda in Iraq.

10 So again, this is again showing the relationship between
11 Tsouli -- or between Irhaby007 anyway and Abu Maysarah. It's
12 a direct relationship.

13 Q. Now, the third part of the information that you were to
14 provide in your testimony had to deal with e-mails that you
15 reviewed on the Ansar, Al-Ansar forum --

16 A. That's correct.

17 Q. -- where that involved some matchmaking I think was the
18 term that you used?

19 A. Yes.

20 Q. Now, just so I'm clear, those were in a specific part of
21 the Ansar forum, or were they -- does the Ansar forum have
22 more than one forum attached to it or forum rooms?

23 A. The Ansar forum was one of the very first forums, so in
24 the beginning there was no Jihad data section, there was no
25 official communique section. At that time everything was

1 being posted in the general forum.

2 The way that you knew something was legitimate or not
3 was based upon who was posting it. So if it was a user, a
4 super user, an administrator, like Irhaby007 or
5 Moheb al-Shaykayn, that was a good indication it was
6 legitimate, because it's an administrator. Or if it's being
7 posted by an official correspondent on there from a Jihadi
8 organization.

9 Other than Abu Maysarah al-Iraqi, there was another user
10 who was associated with Ansar Islam in northern Iraq. There
11 was another user associated with some other group. There
12 were particular users who were essentially the
13 correspondents.

14 What ended up happening was organically over time,
15 someone said, Why would we keep having these guys who are
16 real representatives of Jihadi organizations, why would they
17 post this stuff in the general forum? We should just create
18 a separate room which only they can post in, and that way we
19 don't have to worry about, you know, this whole business of
20 authenticating, proving it's us, and writing "With the
21 compliments of." You just put it there and that way everyone
22 knows this is legit.

23 But this is before that happened.

24 MS. COLLINS: Your Honor, may I have just one
25 minute?

1 THE COURT: All right.

2 BY MS. COLLINS:

3 Q. A question for you, and I think this actually may have
4 been in some of your reports. Have you had personal
5 interaction with Irhaby007?

6 A. Yes.

7 Q. Can you describe that?

8 A. Yes. In August of 2005, shortly before the Ansar forum
9 last went offline, a new version of the forum was created on
10 a new domain, *Ansary.info*. It's the same forum, just a new
11 domain name because they had been shut down, their old domain
12 had been shut down.

13 And in order to welcome users back to the forum,
14 Irhaby007 posted a video recording of an interview with
15 *The Washington Post* that I had done along with several others
16 talking about cyberterrorism. So there was video, and he had
17 posted the video of me talking about this stuff. And it was
18 a screen report, so you could see the mouse moving around in
19 the video, and he was doing some odd things around my face,
20 it made me a little uncomfortable.

21 So I created a new account on the Ansar forum under my
22 real name, and I went on and I sent a private message to
23 Irhaby007 saying, Look, you obviously know who I am, and
24 I obviously know who you are, and, you know, if you have
25 something you want to say to me or if you have something you

1 need to get off your chest, you know, there is no need to go
2 walk around in big circles, you can say it directly to me.

3 And he proceeded then to write me back a personal
4 e-mail, you know, Dear Evan -- literally, "Dear Evan." I
5 don't do interviews, but if you have any questions, if you
6 want to know anything, just come on the Ansar forum, I would
7 be glad to talk with you.

8 Q. I have just put in front of you Government's Exhibit
9 6. Do you recognize that?

10 A. Yes, I do.

11 Q. What is it?

12 A. This is an article that -- or a piece I wrote for
13 *Foreign Affairs* September-October 2006 titled "The Real
14 Online Terrorist Threat" which describes the evolution of
15 terrorist propaganda on the internet and specifically talks
16 about my interactions with Younis Tsouli and Mr. Tsouli's
17 various role in producing and distributing content on behalf
18 of Al-Qaeda in Iraq.

19 MS. COLLINS: At this time the government would
20 admit Government's Exhibit 6 for purposes of this hearing.

21 THE COURT: Any objection?

22 MR. MARTIN: Not for the purposes of this hearing.

23 MR. WAHID: No objection.

24 THE COURT: It's admitted.

25 BY MS. COLLINS:

1 Q. Now, I would like to talk a little bit about another
2 category of testimony that you may be asked -- that the
3 government would seek to admit, and that is about an
4 individual that you have talked about previously in your
5 testimony with both the government and with defense counsel,
6 Ahbid Hussain Khan.

7 You talked a little bit already about how you are
8 familiar with him. Are you familiar -- do you have any
9 familiarity with his connection to any Pakistan terrorist
10 groups?

11 A. Yes.

12 Q. How do you have that familiarity?

13 A. I have reviewed private conversations and letters
14 sent -- and discussions sent between Mr. Khan and individuals
15 in the United Kingdom and also alleged representatives of
16 both Jaish-e-Mohammed and Lashkar-e-Tayyiba.

17 The context of these conversations indicated that
18 Mr. Khan had personally visited the Lashkar recruitment
19 office in Attock, the town of Attock in Pakistan, had
20 directly e-mailed with both individuals from Lashkar and Jaish,
21 and was apparently seeking to make arrangements with them to
22 receive training on behalf of himself and a group of other
23 people.

24 Q. And just because I'm not sure that this specific
25 organization came up earlier, you mentioned Jaish-e-Mohammed?

1 A. That's correct.

2 Q. What is that? Could you just explain briefly to us what
3 that is?

4 A. Jaish-e-Mohammed means the Army of Mohammed. It is a
5 designated foreign terrorist organization, it was designated
6 I believe in 2001. It's an organization that is in
7 Pakistan. It has very, very strong links to the
8 Taliban. They used to produce a joint newspaper together.

9 It was founded by a guy named Maulana, M-a-u-l-a-n-a,
10 Masood, M-a-s-o-o-d, Azhar, A-z-h-a-r, after Mr. Azhar was
11 freed from an Indian prison as the result of a hijacking of
12 an Indian airliner in December of 1999.

13 Q. And what is it that Jaish-e-Mohammed does?

14 A. Jaish-e-Mohammed is, like Lashkar, interested in the
15 cause in Kashmir; however, like Lashkar, their cause is much
16 larger than that, and also encompasses trying to establish an
17 Islamic state inside of Pakistan, and also to provide
18 assistance to other Jihadi organizations from around the
19 world, the Balkans, Afghanistan, you name it.

20 They are -- they are a Pakistani group, but they have
21 transnational aspirations.

22 Q. Do they have training camps anywhere?

23 A. Yes. They have a very notorious training camp which is
24 in a town known as Balakot, which is in northeastern
25 Pakistan. The training camp is very, very well known.

1 Western journalists have even tried going there. It's very
2 difficult to get anywhere near it because of the fact that
3 Jaish doesn't want anything near it.

4 You can see there is something there, and there are
5 satellite photos that have been taken of it. But they will
6 not let anyone who is not Jaish anywhere near the camp.

7 Q. Have you reviewed or seen anything that would connect
8 Khan with that Balakot area?

9 A. Yes.

10 Q. What was that?

11 A. On Mr. Khan's computer, there was detailed maps and
12 geographic information about Balakot specifically, along with
13 another document which was titled, *An English -- excuse me,*
14 *An English Guide to the Paktohi Language for Irhabees*, i.e., a
15 guide to local language, Paktohi for would-be terrorists. And
16 essentially what this was was basic translations of local
17 terminology that you would use in a training camp in this
18 region, words like sword, knife, gun, bomb, explode, things
19 like that.

20 As well as the fact Mr. Khan was recorded himself in
21 video traveling through Balakot, Monsera, and up right next
22 to where this camp is located up in the mountains.

23 In that video he actually even filmed footage of a
24 Lashkar-e-Tayyiba propaganda poster.

25 Q. This is a video that you reviewed?

1 A. Yes.

2 Q. Where did you -- where was it located? Where did you
3 review it?

4 A. The video itself was seized from the possession of
5 Mr. Khan by West Yorkshire police. I was given a copy and
6 I reviewed it subsequently.

7 I should add one thing, I was also present for the court
8 testimony of Mr. Khan in the United Kingdom during his
9 trial. During his testimony, Mr. Khan described at great
10 length about his trip to Balakot, his travels near Balakot,
11 and his -- specifically he went with his own attorney, went
12 scene-by-scene through this video explaining where they were
13 and what they were doing and where this was located.

14 So there is no question he was definitely in Balakot.

15 Q. I have put in front of you Government's Exhibit 5. What
16 is that?

17 A. This is a copy of a report that I produced on behalf of
18 the NEFA Foundation. Its title is Anatomy of a Modern
19 Home-Grown Terrorist Cell, Ahbid Khan, et al.

20 This essentially was meant to be an expanded version of
21 my initial expert report that I drew up on behalf of West
22 Yorkshire police with the assistance also of the testimony --
23 when I sat in court, I created a transcript of everything
24 Mr. Khan said.

25 So I had the benefit of then adding Mr. Khan's own

1 testimony, plus other pieces of evidence that had surfaced
2 afterwards. So an expanded expert report.

3 Q. Now, you mentioned just now that you --

4 MS. COLLINS: Oh, for purposes of this hearing,
5 Your Honor, we would tender Government's Exhibit 5.

6 THE COURT: Any objection?

7 MR. MARTIN: No objection.

8 MR. WAHID: No objection.

9 THE COURT: It's admitted.

10 BY MS. COLLINS:

11 Q. You just said that when you were in court, you created a
12 transcript and you listened to what he said. When you were
13 doing your -- during the course of your work, your research,
14 do you -- is that a source of information that you relied on,
15 the statements of whether they are a defendant or a
16 cooperating witness --

17 A. Of course.

18 Q. -- in court? Is that something that you rely on?

19 A. Yes. It is certainly true that I rely upon sworn
20 testimonies of individuals in court in the United Kingdom and
21 the United States.

22 I also rely upon evidence, pieces of evidence that are
23 submitted as evidence in cases in the United Kingdom and the
24 United States.

25 Q. Is that a source of information that other experts in

1 your field rely upon?

2 A. Yes.

3 Q. Are there any experts who would not rely on that type of
4 information?

5 A. I can't think of anybody. It would be very silly not to
6 rely on it.

7 I mean, if you have an original document which is
8 submitted as an exhibit in a court case, it would be rather
9 silly not to use that. It's an original document. You can
10 always say it came from a court case.

11 But this is not like quoting an argument. I mean, this
12 is a fact, this is -- whether you have got a video recording
13 from a store in Pakistan or you get it as a piece of evidence
14 in a court case, it's still a video recording and it still
15 has value.

16 Q. Now, when you are assessing the value of those -- that
17 type of testimony or statements from defendants or
18 cooperating witnesses, do you put it through any type of
19 analysis or evaluation of its reliability?

20 A. Yeah, again comparative analysis. I compare what's
21 being said in the testimony, I compare evidence, exhibits
22 that are submitted in court, along with what I have gained in
23 my own research, and I try to see does this match up, do
24 these names match up.

25 To give you an example, one of the documents I rely on

1 is the testimony of an individual involved with the '98 East
2 Africa embassy bombings who was interrogated by FBI agents
3 shortly after he was arrested. He said some very interesting
4 things.

5 But it's an FBI 302 document. It's not something I
6 would want to rely on on its own.

7 However, I also have a video recording which was
8 produced by Islamists in Somalia which tells basically
9 verbatim the exact same story that this individual did in
10 this 302. So it's the same names which don't pop up anywhere
11 else, the same exact retelling of events.

12 That's pretty strong corroboration when you have the
13 same story being told both by actual Jihadis in the field
14 right now and individuals who are being questioned by law
15 enforcement upon their arrest.

16 Q. And I guess when you -- when you do that, after you have
17 done that, that is the same type of analysis you would apply
18 to any other type of information you have and then including
19 it in the report, you have done -- if you have included it in
20 the report, you have done that type of analysis on it?

21 A. Yeah. I just don't copy and paste things. Every piece
22 of information I put into here I have to carefully analyze,
23 especially when I wasn't the one who initially dug up the
24 evidence. I have to make sure it's legitimate, it's
25 authentic and it's reliable.

1 But luckily for us, by again doing basic comparative
2 analysis, comparing that to primary and secondary sources
3 that I have gathered independently, comparing it to the
4 reports and tertiary documents, newspapers and whatnot, it's
5 pretty quickly -- you can pretty quickly tell what is real
6 and what is not.

7 But again if you have a video recording of someone
8 saying something, regardless of whether it's submitted as
9 evidence in a case or whether I get it from a bookstore in
10 Pakistan, ultimately it's a video recording of someone saying
11 something, and that has the same level of value ultimately in
12 terms of deciding facts.

13 MS. COLLINS: Your Honor, may I have just
14 minute. I think I am almost done, but I want to make sure.

15 BY MS. COLLINS:

16 Q. I think I just have one more question for you. It may
17 morph into a couple, but let's see.

18 Based on evaluating all the types of evidence that you
19 evaluated as well as the other research that you have done,
20 have you developed any opinion as to whether Mr. Khan served
21 as a recruiter for Lashkar-e-Tayyiba or Jaish-e-Mohammed?

22 A. Yes.

23 Q. What is that opinion?

24 A. Yes, he did.

25 I mean, if you want me to go into detail, there is

1 specific detailed conversations that Mr. Khan engaged in
2 where he specifically laid out the plan for which he was
3 going to speak and negotiate with Jaish-e-Mohammed and
4 Lashkar. He preferred Jaish, others preferred Lashkar.

5 The reason that they preferred particular groups was
6 because there was a perception among different people that
7 particular groups would be able to give them better levels of
8 training and would be able to more effectively push them into
9 Pakistan or another real hot zone where they could join real
10 players.

11 But that was the sentiment. The sentiment was which of
12 these groups is going to give us the highest level of
13 training and is able to most easily push us into a real front
14 line that is not in Pakistan and is not in Kashmir, i.e.,
15 Afghanistan or Chechnya.

16 MS. COLLINS: I think that's all, Your Honor.

17 THE COURT: Okay. Mr. Martin?

18 -- -- --

19 RECROSS-EXAMINATION

20 BY MR. MARTIN:

21 Q. Mr. Kohlmann, starting with the Irhaby007 materials and
22 the al-Ansar website, as I understand your testimony, your
23 conclusions that Mr. Tsouli has some relationship with
24 Al-Qaeda in Iraq is based upon the circumstances of things
25 you have viewed on these websites; is that correct?

1 A. It was based upon a comprehensive study of every message
2 distributed by Al-Qaeda in Iraq, yeah.

3 Q. You saw, for example, the fact that on one of the
4 entries on the website, Mr. Abu Maysarah -- is that how you
5 pronounce it? -- congratulated Mr. Tsouli or Irhaby007 for
6 his assistance in posting something, for example.

7 A. Right.

8 Q. Now, you also said that Mr. Tsouli you understood from
9 other circumstances was at least a co-administrator of this
10 website; is that correct?

11 A. Well, I mean, I know it, but he had to be, because he
12 was editing other people's messages. Any time you edit a
13 message, anyone can see. It says edited by, you know,
14 Irhaby007.

15 Q. Indeed you described him in your report as a super
16 administrator. Is that correct?

17 A. Super user or super administrator, that's right, yeah.

18 Q. Which doesn't forbid or foreclose the possibility that
19 some of these postings that you saw and were attributing to
20 Al-Qaeda in Iraq could have been actually edited or posted by
21 him?

22 A. Well, he wasn't an administrator in the beginning. He
23 became an administrator later on. In the beginning he was
24 just a member.

25 When Abu Maysarah's messages were initially posted on

1 the Muntada al-Ansar forum, Irhaby007 wasn't an administrator
2 yet.

3 Q. How do you know that?

4 A. Because he wasn't an administrator yet. I know the
5 administrators at that point. There was a list.

6 I mean, I could show you. You can also look at the
7 guy's account and you can see that he was not listed as an
8 administrator back then. The reason he became an
9 administrator was because of the fact that over time, he
10 demonstrated the fact, willingness to help run the forum in
11 terms of helping repost links and helping redistribute
12 stuff.

13 So eventually they said, Well, why would you do this
14 informally? Why don't you just become an member, an
15 administrator for the forum?

16 But back when Abu Maysarah first began posting things,
17 it's my understanding that Irhaby was not an administrator.

18 Q. So that's your factual conclusion?

19 A. That is my understanding, yeah.

20 Q. Your understanding. And we do know -- you do know for
21 certain that he was a super user, administrator at least by
22 April of 2005; correct?

23 A. Earlier than that. I would say by October of 2004 he
24 was almost certainly an administrator. I can probably give
25 you an exact date where he definitely was.

1 Q. But you are uncertain exactly when he may have become a
2 super administrator before?

3 A. It was after May of 2004. The reason why I say that is
4 because in May of 2004, the Ansar forum experienced some very
5 serious technical difficulties.

6 In May of 2004 Abu Maysarah used the Ansar forum to
7 distribute the Nick Berg beheading video, and that got a
8 tremendous amount of negative publicity for the forum and
9 they got basically shut down.

10 It's my understanding that one of the reasons that
11 Irhaby became an administrator was because he helped
12 resurrect the forum after it got knocked offline in May of
13 2004.

14 Q. That's your understanding?

15 A. Yeah.

16 Q. With regards to Mr. Khan, you are saying that based upon
17 testimony that you have heard, people you have talked to,
18 investigations made by police departments and so forth, you
19 have done a comparative analysis sufficient for you to
20 conclude as a terrorist expert that Mr. Khan was a recruiter
21 for JEM, Jaish --

22 A. Well, they actually -- it's important to understand that
23 my conclusions were not based upon reading police
24 assessments. They were based upon -- I was given
25 forensically-preserved copies of the hard drives. I was told

1 very, very little about the case, and I was asked to please
2 go through this and -- simply go through the whole hard drive
3 and see what I thought was interesting.

4 They didn't point me to specific files, to specific
5 directories. They just said, Here, take a look. And so
6 I went through the whole hard drive file-by-file, and
7 everything that's in my report was dug out by me. It was --
8 none of this was from police assessments.

9 So I think the way to put it is that it's true, there
10 was a comparative analysis, but the comparative analysis was
11 of the raw evidence, the raw hard drive.

12 Q. I understand. You looked at private conversations
13 I think was the word you used, testimony, correct, is one of
14 things you relied upon, a video that was seized you relied
15 upon.

16 A. Uh-huh.

17 Q. Court testimony. And based upon that, you have done a
18 comparative analysis, your word, to conclude that he was a
19 recruiter for those two organizations, LET and JEM; correct?

20 A. Yeah, the communications that I reviewed appeared to be
21 very similar to previous communications I have seen in other
22 cases involving Lashkar-e-Tayyiba.

23 Q. I want to make sure I have the right number.

24 Government's Exhibit 5, that's your report about Mr. Khan;
25 correct?

1 A. That's correct, yeah.

2 Q. And you talked about your report only including those
3 sources of information that you found reliable and so forth;
4 correct?

5 A. Yeah.

6 Q. And one of the sources of information, page 20 of your
7 report, is, one, a press release from the United States
8 Attorney's Office for the Northern District of Georgia and
9 the indictment in this case. Is that not correct?

10 A. Yeah, because I wanted to be able to lay out the fact
11 that on March 23, 2006, a federal grand jury in Atlanta,
12 Georgia, issued a sealed indictment.

13 I didn't -- I wasn't using those -- I wasn't judging the
14 truth of the accusations of the charges. I was simply using
15 those to say an indictment was filed on that date.

16 Q. Well, you did include that as part of the information in
17 your report, did you not, sir?

18 A. I --

19 Q. And let me finish the question. And said in there,
20 according to the superseding indictment filed on July 2006,
21 you summarize various facts in the indictment. Is that not
22 correct?

23 A. That's correct. But I nowhere -- I just -- again,
24 I stated it for the fact of the indictment. I'm not saying
25 that the facts in the indictment are true, I'm not saying the

1 charges in the indictment are true.

2 It happened that because of the fact that two of the
3 individuals mentioned in the indictment were specifically in
4 discussions that I reviewed on this hard drive, I had no
5 choice but to mention the fact that, you know, these
6 individuals were later indicted and here is what they were
7 indicted for.

8 I made no -- as far as I understand it, other than
9 quoting their exact conversations, I made no judgments
10 whatsoever as to their ultimate guilt or innocence.

11 Q. The earliest date that you believe that Mr. Tsouli
12 became a super administrator of the website al-Ansar would be
13 what?

14 A. I believe -- again this is an estimate, but I would say
15 May 12th, 2004. May 11th was the day that the Nick Berg
16 video was released, so it would be sometime after May 12th.

17 If you would like, I can try to nail that date
18 specifically down. It was never really an issue, but I may
19 be able to nail it down more specifically.

20 Q. And how would you that?

21 A. By -- I have a database of lots of messages that were
22 saved from the Ansar forum, and I can go back through and I
23 can see whether or not there is any indication in any of
24 those that Mr. Tsouli was an administrator earlier than
25 that.

1 But I am fairly certain he was not.

2 Q. But you would only know that if Mr. Tsouli specifically
3 indicated on the edit that he had made the edit. Is that not
4 correct?

5 A. No, that's not correct. If he did anything on the forum
6 which only an administrator could do, it would say -- there
7 would be an indication of such. And it's part of the
8 software, it's part of the forum software, you can't remove
9 those indications.

10 Again, my understanding is -- and I'm fairly certain
11 about this -- is that he was not an administrator prior to
12 May of 2004, but I can try to get down a specific date for
13 you.

14 Q. Let me ask you to do one other thing for me. We talked
15 afterwards, your testimony earlier today, about Jihad Unspun?

16 A. Yes.

17 Q. And in particular about an announcement that the
18 administrator or the host of that, Ms. Qahar, I think she
19 goes by Beverly. Beverly -- what's her last name, do you
20 know?

21 A. Beverly Geisbrecht.

22 Q. Geisbrecht, had made an announcement in 2004 that she
23 was going to travel to Pakistan for the purpose of some
24 project, a documentary or something. You had some
25 independent recollection of that?

1 A. Well, she definitely made -- over time has made several
2 postings like that. In fact, she, like I said, is over in
3 Pakistan right now.

4 I am not sure whether I have that posting, but I will
5 see if I can find any detail on it in my records, yeah.

6 Q. Do you have a recollection from your reviewing these
7 websites that she said she was going to go on a trip, and
8 then she later canceled it?

9 A. I have a general recollection that she made some kind of
10 an announcement about a trip to Pakistan, but beyond that I'm
11 not really sure. I know that again, this was something --
12 this is an idea that she had mentioned over time, and she may
13 have made more than one trip.

14 Q. And would you check on that and let us know about it?

15 A. Certainly, my pleasure.

16 Q. And that may have been something you preserved, it may
17 not have, is that what you are saying, that announcement in
18 your archives?

19 A. Yeah. I mean, Jihad Unspun is not -- because of the
20 fact that it's run by a Canadian lady who, you know, is a
21 Canadian lady, it's not really a primary source of
22 information for me, so I don't really -- I don't visit it on
23 a daily basis.

24 But if I do have a copy of it, I would be happy to
25 determine that, no problem.

1 MR. MARTIN: Thank you.

2 THE COURT: Mr. Wahid?

3 MR. WAHID: Thank you.

4 -- -- --

5 CROSS-EXAMINATION

6 BY MR. WAHID:

7 Q. The report you have on the AQCORPO website --

8 A. Yes, sir.

9 Q. -- that's from August of '06 --

10 A. It was --

11 Q. -- dated at the top?

12 A. That's a good question. Yeah, I'm not sure exactly what
13 that date is referring to. It was written on behalf of
14 British police sometime in 2006, but I'm not sure it was
15 exactly in August.

16 Q. Well, the date says August '06 on it. Was that the date
17 of release, the date --

18 A. Again, I have to check exactly where this came
19 from. It's the version that I gave to British
20 police. That's almost certainly the date that I turned it
21 into them.

22 Q. Okay. Do you recall when you drafted it?

23 A. August of 2006, yeah.

24 Q. Okay. So you drafted this in August of 2006 --

25 A. Yeah.

1 Q. -- or a version similar to this?

2 And at that time you didn't know that Irhaby007 was
3 Younis Tsouli?

4 A. Actually I did.

5 Q. You did?

6 A. Mr. Tsouli was arrested in October of 2005. I knew
7 within days of his arrest that Mr. Tsouli was Irhaby007.

8 Q. And do you use his name in this report?

9 A. Mr. Tsouli?

10 Q. Yes.

11 A. No, because of the fact that I like to be very specific,
12 very precise. And in this case, as much as I know Mr. Tsouli
13 from the court case and from everything else in the
14 newspapers or whatever that that's his identity, at no point
15 in time -- I should emphasize, at no point in time on the
16 Ansar forum did Irhaby ever come on and say, I'm Younis
17 Tsouli, no.

18 But on the same card, you should also know that most
19 people on these forums have acknowledged that Tsouli is
20 Irhaby007, and stories have been posted about Tsouli and
21 whatnot.

22 But to be very clear, again, before he was arrested, no
23 idea who Irhaby007 was. I suspected he was in the UK, but
24 that was it.

25 Q. So it would be fair to say that your information that

1 Irhaby007 is Younis Tsouli comes from the arrest and the
2 subsequent events?

3 A. That would be fair, yes, again, although following that
4 Irhaby007, the user name, disappeared, and there was postings
5 on the forum saying, Our brother has been arrested, this is
6 the story about his arrest, et cetera.

7 But, you know, I mean, for the most part, again, it was
8 before October of 2005, I had no indication what Mr. Tsouli's
9 real identity -- or Irhaby007's real identity was. Excuse
10 me.

11 Q. And up until he got arrested, were you familiar with any
12 of the other user names or e-mails that Irhaby would have
13 been connected to?

14 A. User names and e-mails? Yes, e-mails.

15 Q. Up until the point he gets arrested, not after, based
16 upon what you knew while he was still at large?

17 A. Yes, because Mr. Tsouli -- Mr. Tsouli -- you could reach
18 Mr. Tsouli by sending him a private message over the forum.
19 If you followed what he was doing, you could probably find a
20 way to get in contact with him.

21 Q. Did you get in contact with him through the forum?

22 A. Through the forum.

23 Q. Not through a separate way?

24 A. No, no, I sent him a private message over the forum and
25 I actually included my e-mail address, because I said, Just

1 in case you delete my account immediately after reading this,
2 you can send me an e-mail directly back to my main e-mail
3 address.

4 So he sent me an e-mail from like a blank message, but
5 it was -- you know, it was from him.

6 Q. Okay. So other than the Irhaby007, you didn't have any
7 communications that gave you -- that he had some other e-mail
8 address he was using other than the blank one you just
9 mentioned?

10 A. I'm assuming he used many e-mail addresses. I mean,
11 most people do.

12 I know some of them. I don't think I could have known
13 all of them, though, because I'm sure he was using ones that
14 I wasn't familiar with, I hope for his sake.

15 Q. At the time when he was still at large, my question is
16 did you communicate with him other than through the Irhaby --

17 A. Through the Ansar forum.

18 Q. Yeah, other than through the Ansar forum?

19 A. No, no, no. It was electronically.

20 Q. And let's talk about Ahbid Khan. Your information about
21 Ahbid Khan for the most part seems to be from the
22 trial. Would that be correct?

23 A. That's right.

24 Q. And the evidence that you are talking about was evidence
25 that was presented in that trial?

1 A. That's right.

2 Q. You also were working as a consultant at that time for
3 the Crown; correct?

4 A. Yes, that's correct. Yes.

5 Q. So you had access to that evidence in that capacity?

6 A. Yeah. They anticipated calling me as an expert witness
7 in the trial, but what ended up happening was that Mr. Khan's
8 lawyers stipulated to what was in my report. So my
9 testimony -- I was there in case something should come up,
10 but my testimony wasn't needed.

11 Q. But would it be fair to say you were the only consultant
12 they were using in this context in Mr. Khan's case to go
13 through the data, to do that analysis?

14 A. I couldn't really answer that question. I don't really
15 know.

16 Q. Has anyone else, any of your colleagues ever published
17 anything saying that they were doing the same thing, that
18 they had access to MB-12?

19 A. Not that I can think of, but I really don't know. I
20 don't know. That's not something that's always information
21 that gets shared with me.

22 Q. As somebody who was hired essentially by the Crown to go
23 through this information, you had special access to it that
24 wasn't publicly available?

25 A. That's correct, that's true.

1 Q. So that would be different than the way you were
2 doing -- how you looked at everything else that we have been
3 talking about, which is public access, what you call open
4 source? This is not open source, this is really you are
5 going to a piece of evidence that is not public?

6 A. Well, it was an open source when I first looked at
7 it. It was open source when I published this report
8 because --

9 Q. We are talking about Mr. Khan; right?

10 A. Yeah. I'm now referring to what is marked as
11 Government's Exhibit 5, Anatomy of a Modern Home-Grown Terror
12 Cell, this was written in September 2008. Mr. Khan was
13 convicted in August of 2008.

14 This was written independently of the trial, after it
15 was already over, and the reason I was able to publish this
16 was because the evidence then was public.

17 Q. Right. At that point it was public?

18 A. Right.

19 Q. But the time when you first interacted with the
20 information and you observed the trial, during that time it
21 wasn't public?

22 A. Well, the trial was public.

23 Q. Obviously once it was introduced, it became public in
24 the trial?

25 A. Yeah.

1 Q. But --

2 A. The underlying evidence prior to July of 2008, I would
3 say that's true, it was not public evidence, yeah, for the
4 most part.

5 MR. WAHID: Thank you.

6 THE COURT: All right. Any redirect by the
7 government?

8 MS. COLLINS: I think I may have one question.

9 -- -- --

10 REDIRECT EXAMINATION

11 BY MS. COLLINS:

12 Q. Just so we are clear, when you were speaking with
13 Mr. Martin, you referred several times to your understanding
14 of something?

15 A. Right.

16 Q. Is your understanding, by that -- what do you mean by
17 that?

18 A. I mean this is the conclusions that I have reached after
19 studying hundreds and hundreds of messages posted on forums,
20 these forums in particular, reading discussions among other
21 people talking about these things on the forums.

22 In other words, this the collective wisdom not just of
23 me and other experts that are doing this, but also people
24 that are using the forum. That's one of the easiest ways of
25 finding out things about the forums is reading what other

1 people are writing about.

2 The conclusions that I reach, when I say my
3 understanding, it should be clear, it's not just my
4 understanding, it's also the understanding of other users on
5 the forum. This is what people have -- this is the basis of
6 my research.

7 Q. But to the extent that you are talking about your
8 understanding of something, that's you are saying based on
9 your analysis, based on your research --

10 A. Based on my research. To be very clear, it's not
11 hearsay. It's my personal -- I have personally observed
12 this, this is what I have concluded from what I have
13 personally observed on the forum.

14 Q. So basically your understanding is your expert opinion?

15 A. Right, exactly.

16 MS. COLLINS: That's all, Your Honor.

17 THE COURT: Any follow-up, Mr. Martin?

18 MR. MARTIN: No further questions.

19 THE COURT: Mr. Wahid, any further cross from you?

20 MR. WAHID: No, Your Honor. Thank you.

21 THE COURT: I think I want to hear from the parties
22 on Category III. I don't want to release Mr. Kohlmann until
23 we have that discussion in case there is something else
24 I need.

25 So why don't we ask you -- we appreciate you being

1 with us. Would you, though, mind just stepping out into the
2 vestibule while we have this discussion?

3 THE WITNESS: Of course, my pleasure.

4 THE COURT: I'm still not sure what the government
5 is trying to elicit from the witness on Category III.

6 I have looked at your description here, and now
7 I've compared it to the testimony. What I gathered from the
8 testimony is different than what is here.

9 What I gathered from the testimony is that -- and
10 this will be a thumbnail sketch, but that Mr. Kohlmann has
11 reviewed these forum postings, and included in these forum
12 postings was what he testified as to be a simultaneous
13 posting of a video and then some additional information which
14 would indicate that things were happening simultaneously,
15 that those things that were happening simultaneously connect
16 Mr. Tsouli up with Al-Qaeda in Iraq, the fellow's name which
17 I can't pronounce.

18 That then there was this hidden Al-Qaeda in Iraq
19 web page, and that that indicated a connection between the
20 two. And then there was other activity, forum activity that
21 he observed that would indicate to him by its context that
22 Mr. Tsouli was matching people that were interested in
23 joining Al-Qaeda in Iraq with somebody in Damascus, Syria,
24 for the purpose of referring them to whoever was in charge of
25 activities in Iraq on behalf of Al-Qaeda.

1 And that that's being offered to show Mr. Tsouli's
2 connection with recruitment I guess more pointedly as
3 supported by his other activities and his involvement in
4 connection with Al-Qaeda in Iraq. I think I understand that
5 evidence.

6 With Khan, it looks to me like based upon his
7 hearing Mr. Khan's testimony in the trial in Britain that he
8 has concluded that he also was a recruiter. It's not quite
9 as clear to me exactly who he was recruiting for except maybe
10 this Jaish-e-Mohammed organization in Pakistan. But that
11 testimony just didn't come out as clearly as the testimony he
12 had with respect to Mr. Tsouli.

13 So that's my general understanding. I guess what
14 I want to know is if he is asked about Mr. Tsouli, what
15 opinion is he expressly going to provide in the trial?
16 I mean, I think I know what he knows; I just don't know what
17 he's going to say.

18 MS. COLLINS: I understand, Your Honor.

19 Could I have just one second?

20 I think to answer Your Honor's question, we need --
21 I would like to take a step back and talk about the elements
22 that we have to prove, because I think this will explain what
23 his -- what he will say and I will link it up.

24 In the context of a 2339 (a) charge --

25 THE COURT: I think I understand the charge.

1 MS. COLLINS: Yes, Your Honor.

2 THE COURT: What I'm trying to get is -- maybe I'm
3 just too set in my ways, but I generally work from what's the
4 opinion and what's the basis for the opinion. It is still
5 unclear to me what the opinion is.

6 At some point you have to say, What is your opinion
7 with respect to Mr. Tsouli, and normally the expert witness
8 says, My opinion is three statements, X, Y and Z.

9 I just haven't gotten that.

10 MS. COLLINS: Yes, Your Honor.

11 I think the opinion that he would say is that
12 Mr. Tsouli and Mr. Khan --

13 THE COURT: Start with --

14 MS. COLLINS: I'm sorry, Mr. Khan for purposes of
15 this, I apologize, Your Honor.

16 Mr. Khan was involved in a conspiracy to provide --
17 was part of --

18 THE COURT: Mr. Tsouli? We are starting with
19 Mr. Tsouli.

20 MS. COLLINS: Oh, you would like me to start with
21 Mr. Tsouli? Sure.

22 That Mr. Tsouli was involved through his
23 connections with Al-Qaeda in Iraq and the work that he was
24 doing for them, that he was involved in their conspiracy to
25 murder abroad, and that is the predicate conspiracy of the

1 2339 (a) charge, one of them. We have two.

2 And that is the purpose --

3 THE COURT: And one of the pieces of evidence on
4 that is the IED that was the subject of the postings in the
5 forum?

6 MS. COLLINS: Some of the evidence are things that
7 he posted on the forum, some of the evidence are things that
8 he had on his computer that indicate that he was supporting
9 the conspiracy -- that conspiracy to murder abroad.

10 But in terms of the testimony that he talked about
11 today in terms of what he was doing for that organization,
12 that shows that he was part of that conspiracy.

13 THE COURT: I'm not sure he ever went that far and
14 did that sort of analysis. But I guess you are proffering to
15 me that at trial that he would say, By the way, I have looked
16 at these other communications, and I found that people were
17 working together and -- that they were working together, and
18 I have further information from my review of what's
19 available, that in working together, they were in fact
20 engaged in acts of violence that caused death to people?

21 MS. COLLINS: I think he would do that by
22 explaining the purpose, which we may not -- which we would be
23 happy to ask him about here, of why -- and he actually did
24 get into this a little bit -- talking about why is Al-Qaeda
25 in Iraq so involved in disseminating this media, why is that

1 so important to them, what function does that play in how
2 they achieve their goals, how they carry out their
3 activities.

4 And it's that aspect, that part of the conspiracy
5 that Mr. Tsouli was directly involved in. But it still is an
6 integral part of their violent activities which are the
7 murder and maming, but it's part of that whole -- it's part
8 of that conspiracy. And that's what -- that's ultimately the
9 fact that his opinion relates to.

10 THE COURT: I don't think he went into anything
11 about why it was important for Al-Qaueda in Iraq to get this
12 information out. He talked about them getting it out, but he
13 never stated based upon his review what the import of that
14 was and what the end game of it was other than the fact
15 that -- I try to be an informed citizen and read a lot about
16 what's going on in the world, I know basically what Al-Qaeda
17 in Iraq does or is alleged to do in the press reports, so I
18 have that background.

19 I don't recall him ever saying that in his study of
20 all of this, that he knows the scope of its activities in
21 Iraq, which of course if that got into the trial would have
22 to be admitted through somebody who was competent to offer
23 that evidence to a trier of fact.

24 MS. COLLINS: Sure. Then we would request
25 permission to recall him and I would be happy to ask him

1 those questions to flesh out his knowledge of that.

2 Then going on to Mr. Khan, if that leaves
3 Mr. Tsouli -- or should I talk further about that?

4 THE COURT: No, I think I understand Mr. Tsouli and
5 what the gaps are.

6 MS. COLLINS: Then going on to Mr. Khan, it's
7 basically the same idea, that through the items that he
8 talked about that he reviewed from -- that he located on his
9 hard drives, the letters between him and the organizations,
10 offering to provide training for people who he brought over,
11 other items that were on his hard drive including the video
12 of Mr. Khan in the -- around the Jaish-e-Mohammed camp area,
13 and basically all the information he talked about with
14 respect to Mr. Khan, saying that his activity as a recruiter
15 for these organizations joined him as part of the conspiracy,
16 that organization's conspiracy to murder abroad.

17 THE COURT: And I guess I'm supposed to get that
18 from the short statement he made that Jaish-e-Mohammed was a
19 terrorist organization?

20 MS. COLLINS: And he's also -- and Mr. Khan is also
21 part of the conspiracy to support -- with LET in terms of his
22 bringing not only the defendants, but other people over to
23 LET as well. So all of those things --

24 THE COURT: There is nothing about Mr. Khan and LET
25 that I recall. There is lots about Mr. Khan and

1 Jaish-e-Mohammed, unless I just missed that in his
2 presentation.

3 I mean, the one point when he finally expressed
4 what his opinion was, it did have to do with recruitment,
5 although I took it in the context of not recruiting for LET,
6 but recruiting for Jaish-e-Mohammed. But like I say, maybe
7 I missed that.

8 MS. COLLINS: That's something we would be happy to
9 clarify with him, Your Honor.

10 THE COURT: Let me ask -- and then there are these
11 reports. It seems that the reports are basically writings of
12 his testimony in a way, the reports contain a lot of
13 information upon which he relied -- I mean, he obviously
14 didn't read the report and reach an opinion. He relied upon
15 the underlying information that happens to be summarized and
16 presented in the reports.

17 So, you know, the rule is you can rely -- an expert
18 can rely upon those things that experts in their line of work
19 would rely upon, but that if it's inadmissible -- it has to
20 be independently admissible before it can be admitted at a
21 trial. The expert can't simply admit inadmissible evidence,
22 although they can base their opinion on it.

23 So I'm still confused about, because I have got all
24 these reports, how those are going to be used, because
25 I think that's one of the problems that the defendants have,

1 the uncertainty of the use of those.

2 MS. COLLINS: Yes, Your Honor. I was not admitting
3 that for the purpose -- I don't anticipate we would ever
4 admit those at trial. Those were for the purpose of this
5 hearing to help establish his qualifications to talk about
6 these, just to show these are reports that he's written, they
7 are published, they have been published through all the
8 venues that we talked about earlier in the day, and, you
9 know, for feedback, for peer review, that was the purpose of
10 admitting those. It was not for the purpose of an actual
11 trial exhibit.

12 THE COURT: I guess somebody I thought before lunch
13 made the comment that they were concerned about the use of
14 the reports. But that clarifies that for me.

15 All right. Those are my open questions, but before
16 we bring Mr. Kohlmann back in, I would like a synopsis from
17 Mr. Martin and from Mr. Wahid as far as their views based
18 upon what he has testified about so far, and projecting out
19 that he's probably going to answer the questions that I
20 have.

21 What are your concerns about --

22 MR. MARTIN: Let me, if I may, start with Mr. Khan
23 first.

24 It seems to me that Rule 702 is not meant to be a
25 device merely to call somebody an expert and then be a

1 mechanism to present otherwise inadmissible hearsay
2 testimony.

3 It seems to me that all his opinions about Mr. Khan
4 are based upon what he heard Mr. Khan say in a trial in the
5 United Kingdom, which obviously is hearsay, what reports and
6 other matters that he learned from Scotland Yard or the other
7 investigators in England, and what he may or may not have
8 seen in various different e-mails that the government will
9 put into evidence in this case.

10 THE COURT: Well, he did say that he has reviewed
11 communications, which I understand to be either forum
12 communications or e-mail exchanges, that those communications
13 show his connection to this Jaish-e-Mohammed group that was
14 founded by Maulana Masood Azhar, if I wrote that down right;
15 that the organization was interested in the cause in Kashmir
16 and in creating an Islamic state in Kashmir; that they had a
17 training camp for people that were joining Jaish-e-Mohammed,
18 that that training camp existed in Pakistan, that it was
19 impossible to get near it, that it's near Balakot.

20 That information on his computer showed that he was
21 connected to the area of the camp, and that there was on his
22 computer a video showing the camp.

23 And so you take all of that and you couple it with
24 his sworn testimony in a proceeding, which I believe people
25 that -- sounds to me like people that are doing this

1 connecting-the-dots kind of work to determine who is doing
2 what in the area of terrorism around the world would in fact
3 rely upon the sworn testimony of somebody in a trial or about
4 their activities or their admissions about their activities
5 to corroborate the connection that he's already testified
6 about to him to this one organization, and now I understand
7 LET as well.

8 So I don't see it as you do, you know, he's coming
9 in -- maybe I misspoke to begin with. He's not coming in and
10 saying, Yes, I listened to his testimony, let me tell you
11 what he said. There was a lot of predicate work that he has,
12 plus independent review of writings and detail that was on
13 his computer, and that the final piece of that was his
14 testimony at trial.

15 MR. MARTIN: Surely a DEA agent or FBI agent
16 wouldn't be able to come in here and testify, I attended a
17 trial in Colombia, I have reviewed all sorts of transmissions
18 and telephone conversations, whatever evidence he might have,
19 and I can conclude and tell you that Mr. Jones is a drug
20 distributor for some cartel in Colombia.

21 Just because we are calling him an expert on
22 terrorism -- and we certainly will give him some leeway
23 talking generally about these different groups that he
24 studied, and there is some sort of literature about that, and
25 that may be helpful to the jury that there are these such

1 organizations, the history of conflict between Pakistan and
2 India and so forth.

3 But for him to take that expertise and then say,
4 Now look at these particular facts in this case, and I'm
5 going to tell you based upon testimony in another trial out
6 of the country, police reports, communications I have
7 reviewed which aren't in evidence in this case, and
8 I conclude that he is an operative for this particular cartel
9 or, in this case, terrorist group. I mean, that's ultimately
10 what he's doing.

11 Just that we are calling him a terrorism expert
12 doesn't mean he has some sort of cache just to come in and
13 tell the jury or you as the fact finder what I conclude from
14 the evidence.

15 I don't see how this testimony is anything that you
16 as the fact finder or a jury as the fact finder would not be
17 able to make its own assumptions and conclusions from, that
18 he doesn't add anything as an expert, and therefore it
19 doesn't really help the jury, which is the initial
20 requirement under Rule 702.

21 So that's my biggest problem with Khan is it seems
22 to me he's just sort of a summary witnesses of the state's
23 evidence -- or the government's evidence as to Khan's role in
24 this alleged conspiracy based upon stuff that is not in
25 evidence ostensibly because he as a terrorism expert reviews

1 trial testimonies and stuff like that and coming to
2 conclusions.

3 Just like why wouldn't the police officer be able
4 to do the exact same thing, or FBI agent, or a trained FBI
5 agent in terrorism? Why wouldn't he be able to come and take
6 the stand and say the same thing? We surely wouldn't allow
7 that.

8 I don't see just because he's an independent
9 contractor that we would allow it. That's my first concern
10 about him.

11 With regards to the Irhaby007, again, a lot of what
12 he's telling us, I don't understand how he can draw the
13 conclusion he says he draws necessarily from what he
14 testified to, of the facts he testified to, or whether that
15 conclusion is anything that you need an expert to talk about
16 or the fact finder could draw those conclusions if they
17 want.

18 But essentially what he's saying is that at some
19 point -- he's unclear about the date -- Mr. Tsouli became an
20 administrator on this website, that there were postings made
21 by Al-Qaeda in Iraq, and I guess that part of it where he
22 says this is why I know it's Al-Qaeda in Iraq, I don't see
23 those elsewhere, I guess that's of some use from his
24 expertise, that it looks like they were a forum, an outlet
25 for propaganda that was being put out by Al-Qaeda in Iraq.

1 How you then say therefore he is someone who is
2 supporting every criminal venture or terrorist venture or
3 violent venture that Al-Qaeda in Iraq is pursuing, especially
4 since this whole internet forum is just a place where lots of
5 stuff is being posted from all sorts of different sources --

6 THE COURT: Yeah, but isn't that the point? I
7 mean, if they have to show that these two men were engaged in
8 terrorist activities, and you say that it's not helpful,
9 well, I can tell you already that having somebody who has
10 gone through those hundreds and hundreds of communications to
11 draw out those that would tend -- that in fact relate to a
12 particular person, one, to identify who they are in reality,
13 who is the person behind the screen name, and to show and to
14 point out how those show the nature of his activities and his
15 relationship to Al-Qaeda in Iraq I think is very helpful to a
16 trier of fact.

17 Otherwise in your world, they would have to come in
18 and dump all of that information on the jury, that the jury
19 would have to go through each one of those, that they would
20 have to spend days and days going through this elaborate
21 database, and understanding and digesting the information to,
22 one, even identify those that relate to --

23 A. I don't know if in this particular one instance we are
24 talking about, we are talking about numerous. We are talking
25 about a posting that was made in October of 2004, that

1 simultaneous posting --

2 THE COURT: Mr. Martin, I think I'm kind of
3 computer savvy, but I would never be able to look at those
4 and say through the detail that's on the posting
5 electronically that there was virtually a simultaneous
6 posting of those two that connect those up. You have got to
7 have somebody explain that.

8 MR. MARTIN: That from a technical -- I will
9 concede, from a very technical point of view -- and of
10 course, he hasn't really been qualified as an computer
11 expert. From a technical point of view that --

12 THE COURT: He's not a computer expert, but he is
13 an expert with respect to the digesting of this information,
14 which means embedded in that is that you have to be able to
15 do that.

16 So I mean, you are trying to deconstruct the fellow
17 and trying to say, well, he can't do that, he can't do this,
18 he can't do that, so he can't do any of it. What I'm trying
19 to do is say how is this person as an expert different -- and
20 I would disagree with you about what DEA agents can and
21 cannot do about pulling together conversations, because --

22 MR. MARTIN: If it's in evidence, sure. But not
23 conversations that aren't in evidence.

24 Of course they all the time dissect surveillance
25 tapes and so forth, this is what they were talking about.

1 But it's all in evidence.

2 I have never seen a DEA agent talk about the
3 testimony in a trial in Colombia as to what some witness said
4 as an expert.

5 THE COURT: Well, we can quarrel about that, but
6 that's not relevant here.

7 This is a discipline in my view that while not
8 mature is in fact a discipline, that is, the analysis of
9 information on the internet about terrorist organizations,
10 where there is some group of individuals, which I think this
11 person is part, that are taking a new area which has been
12 I think vetted by peers -- and by not only peers, but I think
13 by law enforcement authorities and the like, that when they
14 put this information out, it's subject to being criticized,
15 reviewed and analyzed and altered, that the value of somebody
16 like this to take very complicated processes -- look, I have
17 read some of these exchanges. We are not talking about you
18 and I exchanging an e-mail about what time we are going to
19 meet for a court case.

20 We are talking about streams of information that
21 take literally hours and hours to finally understand the flow
22 of it, who is saying what, who is what, what's important,
23 what's not important.

24 And I think that there is value, and I think it
25 would be very helpful, especially to a jury, to have some

1 guidance on this.

2 MR. MARTIN: I don't want to belabor that point.

3 I will say that with regard to those e-mails and so
4 forth, we are not objecting to him coming in and saying this
5 is what this person's name is, this is the type of lingo that
6 I see in these e-mails that mean -- for example, Curryland
7 might mean something, picnic might mean something. We have a
8 lot of information about those types of -- it's almost like
9 drug jargon, and we are not objecting to that.

10 What really seems to trouble me is to use him as a
11 summary witness basically to nail down an important issue in
12 this case, which is whether Mr. Tsouli is a person who
13 supports murderous terrorism around the world, as opposed to
14 some guy that just has a website in U.K. and puts up there
15 whatever comes along.

16 And that's what he's trying to do, to say based on
17 this, I say he's a supporter on this. That's something you
18 can conclude aside from what he can do. Now, you may
19 conclude that, but I don't think he can do that as an
20 expert.

21 And similarly with regards to Khan, I don't think
22 we can say Khan is a recruiter for LET or JEM or whoever else
23 they are saying he is based solely upon evidence that's not
24 in this courtroom, evidence from a trial in U.K. and other
25 messages that he's reviewed over the years. And that's such

1 an important ultimate issue in the case.

2 THE COURT: I know, but it's the terrorist use of
3 these websites and these electronic communications which
4 I think is unique in current history with respect to any
5 subset of human activity that you need somebody who has
6 studied and analyzed that to understand what happens and to
7 interpret what happens within this very different new breed
8 of communications among people that -- which we now know
9 across the country and across the world admit that that's one
10 of their principal ways of communication.

11 So it seems to me that there is a sense of conduct
12 that occurs in these rooms that unless you have studied them
13 and have a lot of exposure to them, you don't really know the
14 nature of the communications or their import.

15 And I don't think a juror -- I don't think I could
16 fully understand that without somebody to be able to, in
17 their expert opinion, say I know how -- when this person
18 interacts this way with this other person, I can tell you
19 that that's the way terrorist organizations in these chat
20 rooms and forums communicate, encourage, direct and support
21 each other in terrorist activities.

22 MR. MARTIN: But surely you and I, anybody in this
23 room would understand if somebody -- he says this
24 Abu Maysarah says, Thank you for your good work helping us,
25 I mean, that's no subtle or unusual or thing beyond our kin.

1 I mean, if that's what he's trying to do, he's trying to say
2 I'm trying to give you fact evidence to support the notion
3 that --

4 THE COURT: No, what his opinion on that is that
5 that was extraordinarily unusual. That the importance there
6 is not that he said that, it's that in all of the work he has
7 done, he had never seen that before. And I think that is
8 important.

9 That's what makes him different than you and
10 I looking at that. Because what we don't know if we had just
11 read that, we would say, well, yeah, he's obviously
12 encouraging it. What you don't know is that somebody
13 affiliated with Al-Qaeda in Iraq had never done that before,
14 and here you have this extraordinary contemporary exchange in
15 which apparently somebody was killed that somebody decided to
16 surface and say that's what we want.

17 MR. MARTIN: For posting that video. In other
18 words, thank you for posting that video is what I understood
19 him to say.

20 THE COURT: But it wasn't just some ordinary Joe.

21 MR. MARTIN: Oh, no, it was --

22 THE COURT: It was someone who was unknown and had
23 never surfaced in a chat room like that before, and you and
24 I, nobody would have known that. But somebody who has just
25 pored over this stuff --

1 MR. MARTIN: That conclusion I don't have much
2 problem with. That's a little like saying who somebody is.

3 But then as I understand you are going to allow
4 them to do is give an opinion: Therefore, he must have been
5 someone -- that Tsouli is someone who supports all of the
6 activities of Al-Qaeda in Iraq, I think is beyond his kin as
7 an expert, it is beyond the basis of information that he has.

8 THE COURT: That's not what I heard. What I heard
9 was that he was going to say that he was in -- I guess was
10 working with and supporting the activities without saying,
11 and by the way, here are the specific activities that we know
12 they are supporting.

13 MR. MARTIN: Well, I heard him. Of course, we will
14 see. That's one of the problems I have with the actual
15 e-mails in evidence or the postings, whatever they were, to
16 say thank you for posting these things or thank you for
17 supporting our efforts, that's a big difference. If all he's
18 doing is just being a clearinghouse, that doesn't necessarily
19 transfer into him being someone who supports all the
20 activities.

21 You know, this is -- quite frankly, in a nonjury
22 setting, we can sort of sort all this out as we go through
23 it, and you can hear the opinion and receive it and maybe
24 give it less weight -- I would argue for you to give it less
25 weight.

1 THE COURT: It would not be the first time after a
2 *Daubert* that I actually heard the testimony of an expert and
3 I said that's not exactly the way I thought it was going to
4 come out.

5 MR. MARTIN: I mean, my general exception in both
6 of those areas is that he becomes really more of a fact
7 witness than an expert witness, and therefore he crosses the
8 line.

9 But I will let -- this is really more an issue with
10 a jury. I will let Mr. Wahid speak on it.

11 MR. WAHID: Judge, as to Ahbid Khan -- and I think
12 that Mr. Martin laid it out, but I think it's clear that his
13 full understanding of what Ahbid Khan may or may not have
14 done really comes not from his being an expert in the sense
15 that he has testified all morning, but specifically because
16 he was retained to really function as an agent of the British
17 government's prosecution in that particular case. Not as an
18 independent, but to actually go through a particular set of
19 evidence that was going to be used against Mr. Khan at
20 trial. I don't think --

21 THE COURT: But that's actually information that he
22 probably would not otherwise have had access to.

23 MR. WAHID: Right.

24 THE COURT: The fact he had access to it because of
25 his capacity as someone helping the government I don't think

1 disqualifies him from now employing and interpreting and
2 using that information, even though he commonly uses -- I
3 mean, your point in his cross-examination was, well, that
4 wasn't your open source stuff.

5 Well, I don't think you can say because it's not
6 open source, somehow it comes out of the kind of -- the
7 bailiwick of the information that you ordinarily use. I
8 would say the opposite is that it could be, that it was
9 better information because it was seized by law enforcement
10 authorities.

11 So I'm not buying that argument. But --

12 MR. WAHID: The other issue to that is there
13 obviously becomes an issue of him being put up as an
14 independent expert and talking in that sense about that
15 particular set of facts. He's really not. He's there as a
16 prosecution witness in that case. But --

17 THE COURT: Well, except in fairness to him, before
18 he ever got to that bucket of information, he talked about
19 other information that he had from the sort of stuff that he
20 does all the time.

21 MR. WAHID: But not about Mr. Khan. And I know you
22 said that when Mr. Martin was talking, and I was looking
23 through my notes and I did not see that. And we can maybe
24 bring the witness in to do that.

25 THE COURT: We may need to do that.

1 MR. WAHID: But I don't believe he had information
2 about Mr. Khan separately. I think that all came about when
3 he was asked to look at this database, which was this hard
4 drive known as -- the British evidence item was known as
5 MB-12, that that database was a big deal because it was the
6 largest volume of material and that sort of thing, and that's
7 why they brought him in.

8 Bottom line is that really what he would be doing
9 is being a fact witness. He went there, he physically saw
10 all the stuff, he had an opportunity to read everything
11 himself, he then sat through a trial, he typed up his notes,
12 sort of transcribed as he said the trial. He's really going
13 to come back and just regurgitate that information here.

14 That is really proving an element through him being
15 a fact witness and not as an expert. And I think that he has
16 to be viewed differently if he's going to be able to testify
17 to that information. It has to be viewed as a fact
18 witness. I think, you know, all the items of hearsay should
19 apply as a fact witness.

20 Really this is a mechanism to get around, I
21 believe, our ability to confront some of that evidence as
22 well. There is a transcript. We can just say, fine, we will
23 just bring in the transcript. Mr. Khan testified for five
24 days. If that's what they want to do, just enter the
25 transcript. But we don't do that either.

1 I don't know how we would confront, quite frankly,
2 that evidence and the items that he's going to say he
3 reviewed that we don't have access to, unless it's going to
4 be turned over to us in discovery at some point everything
5 that he reviewed in order to make that opinion.

6 And I don't think it's really even an opinion that
7 he's making that it's a new opinion. In other words, it's
8 not an opinion after the fact. Obviously he said something
9 to the British authorities that led them to believe that this
10 is worth pursuing in a criminal case or this is going to help
11 us in our prosecution.

12 THE COURT: Well, I think that's all speculation
13 and conjecture. I'm trying to deal with what are the facts
14 here.

15 And I'm unclear about the sources of his
16 information, and the reason I -- I do agree with you, he did
17 say he literally -- I think he said he transcribed his
18 testimony and used that.

19 MR. WAHID: The reason --

20 THE COURT: What is the connection between --
21 I think I know, but let me confirm this. What's the
22 connection between the defendants and Mr. Khan?

23 MR. WAHID: Right, and that's what I was getting
24 to. Thank you, Judge.

25 The reason I bring that point up about the

1 prosecution in Britain on this case is that they ended up
2 prosecuting Mr. Khan and a couple of co-defendants, and it
3 had nothing to do with Mr. Sadequee.

4 THE COURT: Well, I don't care why they prosecuted
5 him. I want to know what the connection is between him --

6 MR. WAHID: The connection in this case is that --
7 the allegation is that there are chats between Mr. Khan,
8 Mr. Sadequee, Mr. Tsouli and others that are part of this
9 conspiracy that's at issue in this case, the conspiracy to
10 create this video and use it in a mechanism to scare
11 Americans, that effect.

12 THE COURT: That's right, the video that the
13 defendants are alleged to have taken to D.C. ended up being
14 found on his computer.

15 MR. WAHID: Right, on that MB-12.

16 And the real issue, though, is clearly that's
17 unlike his testimony as we have already talked about this
18 morning where he would be defining a term or something. This
19 is really an element that the government has to prove that we
20 have the right to confront. And I'm not quite sure based on
21 what I have heard so far how we would go about effectively
22 doing that.

23 And as to Mr. Tsouli -- and I assume the government
24 will have some other witness who will say that this e-mail or
25 this moniker is Mr. Tsouli's somehow, because he didn't know

1 that at the time he was doing his work. He may know that
2 now, but he knows that now also because of subsequent
3 readings or having, you know, been at the trial and being
4 involved in that way.

5 THE COURT: So you think if that moniker is being
6 used by somebody else before that, that for some reason if
7 you don't learn about it until some point in time, you can't
8 relate it back?

9 MR. WAHID: No, I'm just saying at the time he
10 drafted his August 2006 report, you know, he did not know.

11 THE COURT: No, he did know. He said he didn't put
12 it in the report.

13 MR. WAHID: That's correct, he knew it from other
14 sources, not from public sources.

15 THE COURT: And he did not put it in the report
16 because --

17 MR. WAHID: It was from a confidential source.

18 THE COURT: Right.

19 MR. WAHID: The real issue is going to come down to
20 as to Mr. Tsouli is -- and again, Mr. Tsouli was charged and
21 arrested and convicted completely on a separate issue than
22 Mr. Sadequee is here for.

23 The idea is that because a witness is going to get
24 on and say Mr. Tsouli was a terrorist, and because Mr. Tsouli
25 was talking to Mr. Sadequee, you can infer Mr. Sadequee is

1 also a terrorist, that's really the issue that's going to
2 come about here. As an unindicted co-conspirator in the
3 case, they are not going to --

4 THE COURT: No, I disagree with that. I mean, we
5 are talking about probative evidence. Does that tend to be
6 probative on an issue in the case? I think that, as you have
7 just articulated, I think that connection is probative.

8 I mean, you can argue that it doesn't show that at
9 all and they haven't proved what they were supposed to prove
10 beyond a reasonable doubt. But the question here is can an
11 expert like Mr. Kohlmann come in and provide -- and it's a
12 much harder argument that you have with Mr. Tsouli because
13 there is such specific data that would connect a specific act
14 with an organization and specifically with Mr. Tsouli.

15 Now, if they can connect up the defendants with
16 Mr. Tsouli, then you can argue whether that's connection is
17 strong enough to prove what they want to prove. But the
18 data, the information seems to be more compelling than what
19 I admit is less compelling with respect to Mr. Khan.

20 MR. WAHID: I think it's also important to know
21 what Mr. Tsouli actually was convicted of, because he
22 eventually pled guilty. They started the trial and he pled
23 guilty. He pled guilty to charges -- my understanding is
24 that those charges are not what we would consider material
25 support charges here. It's a different type of charge.

1 THE COURT: Well, you can stipulate to that,
2 I guess, unless the government objected to it.

3 MR. WAHID: Well, I think it's important as well to
4 know what he would say. If he's going to say he's a
5 terrorist, is he talking about what he was convicted of, or
6 is he saying -- is it strictly confined to that interaction
7 that we heard about?

8 Is he also going to get into the fact that he was
9 convicted of this, this and this?

10 THE COURT: Well, it seems on cross-examination, if
11 you wanted to clarify and make sure that his opinion is based
12 only on what he's actually reviewed and that information to
13 reach his opinion and you wanted to make it clear that
14 Mr. Tsouli was not convicted of a similar charge as exists in
15 this case -- I never know how it's actually going to come up,
16 but it seems at least in the realm of reasonable examination
17 on cross to say, you know, wait a second, to the extent that
18 he's been convicted, you need to know what it is, I'm sure he
19 knows or that somehow can get admitted.

20 MR. WAHID: Well, again it goes to how much does he
21 know. And to be able to say part of a story because I only
22 know part of a story would limit what I can really cross him
23 on and therefore what I can present as the full story to the
24 jury.

25 Both with Mr. Khan and Mr. Tsouli I do believe

1 there is an issue of confrontation here, because these are
2 not having an expert come in and just define what does Jihad
3 mean. He's basically saying that the guys that the defendant
4 was speaking to are terrorists, and therefore you can infer
5 that they are terrorists.

6 THE COURT: But the cases say that the
7 confrontation right, especially when you are speaking
8 about -- even if the opinion of an expert is based upon
9 inadmissible evidence, that the confrontation right is
10 satisfied by the right to cross-examine the expert, to show
11 what in fact he did and did not rely upon, and the
12 reliability of that.

13 MR. WAHID: And I think the interaction that he
14 talked about on the May -- I don't know the date -- 12th,
15 2004, where he was talking about a very specific instance
16 where he's watching it online, that sort of thing, that falls
17 within the subject matter of what he is an expert on.

18 But I believe that watching the trial and just
19 bringing back information and knowing about what happened in
20 Tsouli's trial and going there and getting -- looking at the
21 data specifically that he may have had access to, that is not
22 something that he would have access to in the methodologies
23 described, I believe that makes him more of a fact witness,
24 and I think that changes --

25 THE COURT: You know, you would be arguing -- if he

1 did not go to the trial, you would be arguing that it was not
2 responsible, it was not a responsible thing to do, not to go
3 and listen to his testimony, because it might have differed
4 from the information that he got through his regular
5 activities.

6 It seems to me, first, I recall him saying that he
7 does not rely upon government interpretations or indictments
8 or convictions to reach his conclusions; that his conclusions
9 are based upon data, information that he gleans from a
10 variety of sources.

11 And these two particular cases you had, after he's
12 reviewed -- let's stick with Mr. Tsouli for a second. He's
13 reviewed all of this other information. I don't recall him
14 actually sitting through Tsouli's trial, but I could be wrong
15 about that, listening to his testimony. That seemed to be
16 more focused on Mr. Khan.

17 But that he reached certain conclusions about who
18 Mr. Tsouli was and what he was doing. But -- and let's
19 assume he did sit through and listen to Mr. Tsouli's
20 testimony.

21 MR. WAHID: I could be wrong. I may be mistaken on
22 that.

23 THE COURT: I don't know, I may be wrong too. We
24 have an equal right to be wrong, and we can get that
25 clarified when he comes back.

1 But just for the sake of fleshing this out, that he
2 in fact listened to Mr. Tsouli's testimony. That's just more
3 information, although the quality of which is pretty good
4 since if he testified, it had to be under oath in a formal
5 proceeding, and I would expect him -- and I would believe it
6 was in fact a responsible thing to do, to listen to that,
7 because in fact if he heard things that discredited
8 conclusions that he had reached and opinions he had reached
9 based upon his prior review, that he needed to change it.

10 But I don't ever hear him saying, I'm going to be a
11 parrot here, all I'm going to do is come in here and repeat
12 to you what he said at trial. I think he's been very careful
13 not to do that and to state that that would be irresponsible
14 to do that.

15 MR. WAHID: But what analysis is he doing when he's
16 just going in either sitting through Khan's trial or going
17 through -- I don't know, I would have to find out more about
18 his basis on Tsouli other than what he's already said.

19 But the question is what's the analysis there? It
20 would be akin to I don't know of any situation where --

21 THE COURT: It's the same analysis that any
22 reconstruction expert in a products liability case
23 does. They go out and they say here is what I saw, then
24 I talked to people and here is what they told me. I don't
25 know if it's true, but that's what they said they saw. And

1 here was an observer at the side of the road in a parked car
2 and they saw something. And I take all of that and do this
3 critical examination and analysis and reach an expert
4 opinion.

5 And you can come and challenge me all you want, to
6 say, Well, you don't know if it's true what Mrs. Smith saw
7 when she was driving behind the car, and you don't know if
8 Mr. Jones who was there at the side of the road had a
9 clear -- in fact, when you talked to him, it wasn't really
10 that clear, but you still relied upon that, to discredit the
11 opinion.

12 MR. WAHID: I beg to differ, I think that's
13 different than the idea of sending -- I mean, why wouldn't
14 the government then simply just send an agent to every other
15 trial that's going on and have them watch them and come back,
16 and that guy can go around the country testifying to
17 everybody they decide to connect as a co-defendant.

18 THE COURT: Because it's -- I don't see why you
19 have a problem with somebody's sworn testimony and an expert
20 saying let me add that to the universe of information
21 I already know.

22 MR. WAHID: Are they going to introduce the other
23 sworn testimony? Is that what we are going to see?

24 THE COURT: If you want to, I bet they will.

25 MR. WAHID: I don't know.

1 THE COURT: Well, let's ask them. Turn around and
2 ask them.

3 MR. WAHID: How do I cross that sworn testimony? I
4 don't know. Isn't that why we have Rule 15 depositions?

5 It just seems to me that -- I'm just not familiar
6 with having seen that before, and it seems to me that
7 that would --

8 THE COURT: Are there any cases that say you can't
9 do that, that an expert can't rely upon the sworn trial
10 testimony of somebody in reaching an opinion?

11 MR. WAHID: It would seem to me he's not an expert
12 then at that point. It's a fact witness. And I think
13 that's --

14 THE COURT: What I'm saying, are there any cases
15 that adopt your position? My guess is there are not. In
16 fact, my guess is -- and I haven't looked at it because this
17 is the first time this has been articulated -- is that there
18 are cases probably that discredit that position.

19 But I don't know. I will give you a chance to
20 submit those cases.

21 MR. WAHID: That's essentially the arguments that I
22 have as to Mr. Khan and Mr. Tsouli and his testimony. And
23 maybe we can ask him little more about Mr. Tsouli.

24 THE COURT: We have spent so much time on this
25 testimony, your fear is that he really -- with respect to

1 Mr. Tsouli, your fear is that by having listened to his trial
2 testimony, assuming he has, that he will be unduly influenced
3 by that or will unduly rely upon that in expressing his
4 opinions? Is that the fear that you have?

5 MR. WAHID: Assuming that his opinion is going to
6 be that Mr. Tsouli is a terrorist who is supporting -- or is
7 a supporter, I'm sorry, a supporter of Al-Qaeda in Iraq, and
8 he's going to say that based upon what he told us with this
9 e-mail, the simultaneous posting issue of the video and a
10 comment right after it, and another individual thanking him
11 for something at a later date, based upon that type of
12 testimony I don't have an objection.

13 Based upon him saying other things about what
14 Mr. Tsouli was involved with, getting into what he was
15 convicted of and all that type of testimony, and then saying
16 obviously to connect that to Mr. Sadequee that Mr. Sadequee
17 was talking to Mr. Tsouli, I think that is a problem, because
18 I believe it goes from an expert into fact. Because the
19 basis of it -- I would have to see what the basis of it is,
20 but at the moment that would be my concern.

21 THE COURT: Well, let's find out from the
22 government -- one of the problems here is -- I think we avoid
23 all this if we do it my way, but we haven't done it my way,
24 because we don't get the opinions and then we don't drill
25 down to see what the opinions are based on.

1 So I think at least I am uncertain where, because
2 we don't know -- we know now what the opinions are, but we
3 don't know whether Mr. -- can you move over just so I can see
4 her?

5 MR. WAHID: I will sit down.

6 THE COURT: The concern is about this trial
7 testimony.

8 First of all, did he listen to Tsouli's trial
9 testimony?

10 MS. COLLINS: No, Your Honor. Mr. Tsouli did not
11 testify at trial. He pled guilty.

12 THE COURT: Yeah, so that's what I -- I didn't
13 think he testified.

14 So does that resolve the issue with respect to
15 Mr. Tsouli, Mr. Wahid?

16 MR. WAHID: Again, if I know how broad his opinion
17 is going to be, if it is limited to Mr. Tsouli in connection
18 to Al-Qaeda in Iraq, then it really has nothing to do with
19 what he was I think charged with in the end anyway. I don't
20 think it has anything to do with that case that he is charged
21 with. I think it will be based upon on what he talked about
22 here today.

23 Like I said, if it's limited to that type of
24 testimony of his interaction by what he does on the internet,
25 I don't have an objection to that part.

1 THE COURT: Does the government intend to have
2 Mr. Kohlmann say -- well, now we know he hasn't testified,
3 and by the way, I'm right because he pled guilty and was
4 convicted of whatever offense he was convicted of.

5 MS. COLLINS: No, Your Honor. I don't anticipate
6 asking him what Mr. Tsouli was convicted of.

7 THE COURT: Well, sometimes I'm not worried about
8 what you ask. I'm more concerned about what he says.

9 MS. COLLINS: Yes, Your Honor, we will tell him not
10 to talk about that, and that's not something we would want or
11 need to elicit.

12 THE COURT: If they are instructed, which I will
13 instruct them now that they should not go into the fact that
14 he pled guilty to any offense or any conviction that he has,
15 does that address your concern with respect to Mr. Tsouli?

16 MR. WAHID: Are we going to be telling the jury
17 that Mr. Tsouli has been convicted of anything? What are we
18 going to tell them about Mr. Tsouli? Who is going to say it
19 other than what Mr. Kohlmann just said?

20 MS. COLLINS: We are not sure, but any testimony
21 about that would not come from Mr. Kohlmann.

22 THE COURT: That seems to be a relevancy issue. If
23 somebody else intends to do that, that's a separate I think
24 relevancy issue.

25 But now we are just talking about what Mr. Kohlmann

1 is going to say. If Mr. Kohlmann is mute on that and doesn't
2 talk about being prosecuted, indicted, and convicted after
3 pleading guilty, which is what I'm telling the government
4 they should not do and which they are saying they weren't
5 going to do anyway, with respect to this witness, does that
6 resolve your concern?

7 MR. WAHID: Yes, assuming it's not coming from --
8 the other information is not coming from this witness.

9 If it's limited to what he said, as I have stated
10 before, I don't have a concern with that section.

11 THE COURT: All right. Now, let's go to Khan. I
12 am unclear about where his -- because we do know because we
13 have the transcriber here that he actually got -- I got the
14 impression that he relied a lot about what he said at trial,
15 but I don't know where that fits in and I don't know how he
16 used that in connection with the opinions that he reached.

17 So I think that is a valid area. We ought to bring
18 him back in and try to be more disciplined in going through
19 to find out what the basis of his opinion is and more
20 specifically where the sworn testimony comes in.

21 MS. COLLINS: Yes, Your Honor.

22 THE COURT: Before we go to Mr. Khan -- I'm not
23 ignoring you, Mr. Martin.

24 MR. MARTIN: That's okay.

25 THE COURT: But if in fact I don't consider the

1 conviction -- and I will say, I don't even know what he was
2 indicted for, so I wasn't going to consider that anyway.

3 I think it's what he has done in connection with his
4 day-to-day activities that's important to me, not the fact
5 that somebody might have been convicted of something.

6 MR. MARTIN: I mean, if he testifies that he saw
7 these e-mails, the whole thing he said he saw about e-mails,
8 the posting and what he saw, that it was unusual, but doesn't
9 draw any larger conclusions from all that, which I think is
10 beyond his expertise, that this is something I saw that was
11 unusual, I hadn't seen before, and it showed there was, if
12 these were actually posted like this, some connection between
13 Tsouli and them, I have no problem.

14 What worries me is when he says this, therefore,
15 shows he supported all their activities, which I don't think
16 he can fairly say with the evidence that he has.

17 THE COURT: Well, it depends what's actually
18 in. You know, if there are communications that he's reviewed
19 that he has connected up with Mr. Tsouli -- and I'm not
20 saying that this is the evidence, but just to look at the way
21 the evidence might come in, if he says, and by the way, I
22 have 14 instances where he endorsed specific acts where
23 people were killed in terrorist attacks, that would be
24 different.

25 MR. MARTIN: That's not -- what I understood the

1 testimony to be is that the fellow from Al-Qaeda in Iraq was
2 thanking him for facilitating the posting of these --
3 whatever they were posting. That's what I understood his
4 testimony to be.

5 THE COURT: Well, I think his testimony goes beyond
6 that. I think he was applauding him for --

7 MR. MARTIN: Whatever.

8 THE COURT: -- for violent --

9 MR. MARTIN: But it wasn't Tsouli saying I agree
10 with everything you are doing. It's him saying thank you for
11 doing this or we applaud you or this is helping us or
12 something like that.

13 THE COURT: And whatever inference is drawn from
14 that is drawn.

15 MS. COLLINS: Your Honor, I think that that's
16 something that we can also flesh out, I can flesh out with
17 some questions from Mr. Kohlmann.

18 THE COURT: Let's have Mr. Kohlmann come back in.

19 We are in the process of cramming these four hours
20 of testimony into seven hours now. I guess when I told you
21 we were going to be done by early afternoon -- and I'm a
22 pretty good judge on how long things go -- but I was wrong on
23 this.

24 MR. McBURNEY: We have some equal rights to be
25 wrong about that.

1 THE COURT: But it's really the break that the
2 government took to have the discussions over lunch, that's
3 what put us behind.

4 -- -- --

5 FURTHER DIRECT EXAMINATION

6 BY MS. COLLINS:

7 Q. Mr. Kohlmann, you are still under oath.

8 A. Okay.

9 Q. I have a few questions for you to explain a little
10 further some of the things that you talked about today.

11 One thing we talked about today is Jaish-e-Mohammed, and
12 you identified some things about them, but I neglected to ask
13 you, did they engage in violent activity?

14 A. Yeah, their premise is violent activity. They actually
15 are a splinter group of another designated foreign terrorist
16 organization, and the people that founded Jaish-e-Mohammed
17 felt that the previous organization was not radical enough.
18 So they found -- they were not violent enough, so they
19 founded a new organization, Jaish-e-Mohammed, which would
20 more firmly advocate violence.

21 So, yeah, I would say that that is their primary
22 methodology, violence.

23 Q. Advocate violence or engaged in violence?

24 A. Engaged in violence.

25 Q. Can you talk a little about that, what types of

1 activities are you talking about?

2 A. Well, before I discussed how Lashkar-e-Tayyiba focuses
3 on tactics, like fedayeen, like swarming a target, taking it
4 over and trying to hold it.

5 Jaish-e-Mohammed uses the tactics of suicide
6 bombings. Several Jaish operatives and Jaish members have
7 carried out suicide bombings over the last five years
8 including specific attacks targeting Pervez Musharraf, the
9 former president of Pakistan, for assassination.

10 Jaish-e-Mohammed activists have also been picked up
11 inside Afghanistan by the U.S. forces there, they have been
12 picked up all across Pakistan. But again, they have engaged
13 in everything from straight combat against U.S. forces in
14 Afghanistan to suicide bombings.

15 THE COURT: And how do you know that?

16 THE WITNESS: Because of the fact that individuals
17 who have carried out the suicide bombings in Pakistan were
18 later identified by Pakistani police, and they were known
19 Jaish-e-Mohammed operatives.

20 Now, the Pakistanis were never able to conclusively
21 say that the leadership of Jaish-e-Mohammed ordered this
22 attack, but I think it's pretty clear that the membership of
23 Jaish-e-Mohammed is engaged in this kind of behavior.

24 This is the kind of methodology that they -- and
25 also I should add as well that in their own publications,

1 they have specifically stated this. Maulana Masood Azhar
2 wrote a book called *The Virtues of Jihad* where he laid out in
3 extreme detail, you know, what are the precepts of
4 Jaish-e-Mohammed and, you know, how -- what are we supposed
5 to do.

6 And I guess you could say that his version of Jihad
7 is pretty much firmly rooted in the idea of violent struggle.

8 Q. What was the name of the individual that you just said?

9 A. Maulana Masood Azhar, A-z-h-a-r. This is the same
10 individual that I referenced before who was freed from an
11 Indian prison in 1999 when hijackers took control of an
12 Indian airliner and commandeered it and flew it to Kandahar,
13 Afghanistan. In order to get that airliner free, the
14 hijackers demanded Masood Azhar be freed.

15 So when he came back to Pakistan, he formed this new
16 organization Jaish-e-Mohammed in again 2000. It's a
17 relatively new organization and it is, you know, the
18 Pakistani government has said the exact same thing,
19 Your Honor, the Pakistani government in their prohibition of
20 the organization have specifically accused them of being
21 responsible for suicide bombings.

22 Q. And is Jaish-e-Mohammed the organization whose training
23 camp in Balakot you referenced when you were speaking about
24 Mr. Khan earlier?

25 A. That's correct. They have several training camps, but

1 the principal one which they are known for is the Syed Ahmed
2 Shaheed camp, which is in Balakot.

3 Q. And do they accept fighters from outside Pakistan or
4 other places into that camp?

5 A. Yes. In the joint Taliban/Jaish-e-Mohammed publication
6 known as Dharb-i-Munin, Jaish actually specifically wrote
7 about the Syed Ahmed Shaheed camp, described what was going
8 on there saying it was welcome from Mujahideen all over the
9 world who were coming there to fight the true battle and that
10 they were looking for people to donate money and come there
11 and get training, that the new generation of Mujahideen would
12 come from this camp.

13 Q. Now, another group that we talked about extensively this
14 afternoon is Al-Qaeda in Iraq, and you talked about the
15 spokesmen, the individuals posting to Muntada al-Ansar, the
16 Abu --

17 A. Abu Maysarah.

18 Q. Excuse me, Abu Maysarah al-Iraqi. Now, what is -- from
19 Al-Qaeda in Iraq's perspective, what is the purpose of
20 disseminating those items, those videos that you were talking
21 about, the Nick Berg beheading, other things, on these
22 forums?

23 A. Well, there is two purposes. The first purpose is that
24 back at that period of time, there were a lot of people who
25 simply do not believe that Abu Musab al-Zarqawi existed.

1 There were a lot of people in the western world who argued he
2 didn't exist and that this was all a conspiracy of whoever to
3 carry out these bombings.

4 And Zargawi was very insistent on proving his
5 existence. But in order to prove his existence, the reason
6 that he was doing that was to win followers.

7 The problem that Al-Qaeda in Iraq had, it was a very
8 small group and it was all foreign fighters in the
9 beginning. It was very few Iraqis, it was almost all foreign
10 fighters. And Zargawi was relying on one particular tactic
11 which other groups did not rely on, which was suicide
12 bombings.

13 In order to carry out a steady stream of suicide
14 bombings inside of a place like Iraq, and you can't get local
15 Iraqis to do it, well, who do you turn to? The only people
16 around are foreign fighters, people recruited from places
17 like Saudia Arabia, Kuwait and other countries, including the
18 west.

19 Now, how do you get someone to want to go to Iraq and
20 blow themselves up? Well, you disseminate videos on the
21 internet which glorify acts of violence, like beheadings,
22 like suicide bombings. You show videos of bombers on their
23 way to carry out an attack and cheering and celebrating and
24 smiling and I'm on my way, and you should all follow in this
25 path.

1 And that was the clear message. I mean, that was in
2 every single suicide bombing video released by Zargawi's
3 organization, every single one, there was a message from the
4 bomber to the outside world -- in some cases, very
5 specifically: Everyone who is watching this video or
6 watching this on CD, listen to my words. It's your
7 obligation to follow in my footsteps.

8 Q. Now, just -- and this is a very quick question, but just
9 so we are all clear. When you are talking about Zargawi and
10 his organization, you are talking about Al-Qaeda in Iraq?

11 A. That's correct. Prior to October of 2004 it was known
12 by another name, but in October of 2004 Zargawi swore
13 allegiance to Osama Bin Laden, and after that period of time,
14 it became known exclusively as Al-Qaeda in Iraq.

15 Q. If that is Al-Qaeda's purpose in distributing these
16 materials, what value is then provided by an Irhaby007 in
17 providing additional links you said to those materials?

18 A. Well, the problem that Al-Qaeda had was that they were
19 making great videos, they were wonderful videos. The problem
20 was they were having difficulty distributing them to
21 people.

22 When the Nick Berg video came out, they didn't know
23 where to host it. So they tried hosting it on a couple
24 different temporary sites. By the time that the actual
25 announcement reached anyone's e-mail boxes, those sites were

1 overloaded. You couldn't access -- the video was
2 inaccessible, and people started posting messages saying, How
3 can you post this link and then the link doesn't even work?
4 You are teasing us with this. Come on, guys.

5 And it just seems like for some reason the whole idea of
6 hosting internet websites, which usually requires a credit
7 card, which these guys don't have, real Jihadis in the field,
8 they couldn't set up the way to host this material. They
9 needed someone to distribute it for them, and they needed
10 someone to market it for them, create, you know, flashy
11 advertisements for internet websites, flashy previews.

12 And I suppose they might have been able to find someone
13 eventually, but what ended up happening was that Tsouli or
14 Irhaby007 was doing such a great job of it on his own that at
15 a certain point, I mean, his abilities far superseded anybody
16 else's. He was doing critical tasks for them.

17 When Mr. Tsouli was eventually arrested, these
18 organizations got together and formed an organization which
19 is now responsible for doing everything that Mr. Tsouli --
20 that Irhaby007 used to do, distributing, marketing, all of
21 that. That's the responsibility of a whole virtual
22 organization. That's what Tsouli used to do.

23 And that was critical, absolutely critical, because if
24 the videos don't reach anybody, then they are no good.

25 Q. They are no good for the purpose of --

1 A. Recruiting, or for anything else. They are useless. I
2 mean, these videos are used for financing purposes, they are
3 used for recruitment, they are used for propaganda. If they
4 don't reach anybody, if nobody sees them, they are no good.

5 Because of Irhaby007, because of the work that he did,
6 Abu Musab al-Zarqawi earned the nickname "The Sheikh of the
7 Slaughterers." The only reason he earned that nickname was
8 because Zarqawi was singularly associated in 2004 with one
9 thing above anything else: Beheading videos on the internet
10 that were distributed over a wide variety of internet
11 websites and reached a lot of people.

12 Q. And those were assisted and distributed by Irhaby007?

13 A. Not only -- in the beginning it was assisted. In the
14 end, he was doing it deliberately on their behalf. They were
15 asking him to do this. They were asking him to set up
16 websites, and he was doing it at their specific request.

17 Q. I would like to -- one question about Irhaby007,
18 Younis Tsouli. Have you reviewed his hard drives and other
19 material?

20 A. I have reviewed material from his desk top. I have
21 reviewed some of the material that was seized from his
22 computer and from the Muntada al-Ansar forum, material siezed
23 by British police from the Ansar forum.

24 However, I was not given a forensically-preserved copy
25 of his drive as I was in Operation Praline involving

1 Mr. Ahbid Khan and his associates. In this case I was given
2 specific pieces of evidence and asked what is the
3 significance, who is this person, who is Abu Anas al-Shami?
4 Who is this person? Why would someone create a log in on
5 this forum calling himself Abu Anas al-Shami? What does that
6 mean?

7 It happens that Abu Anas al-Shami was one of the deputy
8 commanders of Al-Qaeda in Iraq, so that was something that
9 I went into.

10 But a forensic examination of the hard drive is not
11 something I did.

12 Q. And to your knowledge, did Mr. Tsouli testify at trial?

13 A. He did not. He pled guilty before the trial was over.

14 Q. I would like to turn now to talk about Mr. Khan, who we
15 also talked about pretty extensively earlier. And you talked
16 about information linking him to Jaish-e-Mohammed. I would
17 like to talk about information linking him with
18 Lashkar-e-Tayyiba and that organization.

19 Are you familiar with any -- have you reviewed any
20 information that would link him to recruitment for
21 Lashkar-e-Tayyiba?

22 A. Yes.

23 Q. And what is that information?

24 A. Well, it's a variety of different sources. Number one,
25 he engaged in online discussions with other individual's,

1 namely Wasim Mughal, about their interactions with
2 Lashkar-e-Tayyiba in which he explained to Wasim Mughal in
3 detail his visit to a Lashkar office in Attock, his
4 communications with Lashkar, and they discussed back and
5 forth whether or not they preferred Lashkar or
6 Jaish-e-Mohammed, and why.

7 From that conversation, it was pretty clear that both of
8 them had been in touch with Lashkar-e-Tayyiba.

9 Q. And who was Wasim Mughal?

10 A. Wasim Mughal was a co-conspirator involved in the case
11 against Mr. Tsouli. He also was convicted, and is currently
12 serving a prison sentence in the United Kingdom.

13 Q. Is there any other information that you have reviewed
14 involving Mr. Khan and LET?

15 A. I believe on Mr. Khan's computer, there are also copies
16 of anasheed songs, Islamic music which were specifically
17 downloaded from the Lashkar-e-Tayyiba official website.

18 Q. And what significance is that to you, based on your
19 research and knowledge about --

20 A. Well, these files were only available on the Lashkar
21 website. So if someone had them on their computer,
22 presumably they either visited the Lashkar website or they
23 obtained Lashkar material from somebody else.

24 And aside from that, the lyrics of these songs were
25 extremely intense. The lyrics of the songs went along the

1 lines of we are going to stick the sword into Bill Clinton,
2 the sword is going to be dripping blood, we are going to kill
3 the Americans. They were very, very explicit lyrics.

4 And I actually asked Abdullah Muntazir about these songs
5 when I interviewed him, and he wasn't able to explain to me
6 what they were doing on the site or what Lashkar was trying
7 to suggest by putting them on there.

8 Q. And Mr. Muntazir is the --

9 A. Muntazir, yes.

10 Q. Mr. Muntazir is the head -- the spokesman for LET you
11 referenced earlier in your testimony?

12 A. Yes. I pointed him to the location of the songs on the
13 site, and I read him the lyrics, and I asked him what they
14 were doing there. And he mumbled something, and then he
15 said, I can't respond to this, I can't answer that question.

16 Q. Now, when you were talking about the opinion that you
17 had reached with respect to Mr. Khan, you talked about some
18 of the sources of information that you used to reach that
19 opinion.

20 Now, could -- did you reach -- at the time before
21 Mr. Khan testified, had you reviewed his -- the forensically
22 preserved media and hard drives that he had been arrested
23 with and had been picked up by British police?

24 A. Yes.

25 Q. Had you already formed an opinion about Mr. Khan's

1 activities and what he was up to?

2 A. I had some idea but, yeah, it was -- a lot of it was
3 confirmed by Mr. Khan himself during his own testimony.

4 Mr. Khan specifically described Lashkar-e-Tayyiba,
5 specifically showed a Lashkar-e-Tayyiba propaganda poster on
6 a video that he recorded, identified what Lashkar was.

7 He seemed to have quite a bit of knowledge of
8 Lashkar-e-Tayyiba.

9 Q. But before he testified, you knew what Lashkar-e-Tayyiba
10 was; correct?

11 A. Yes.

12 Q. And when you had reviewed -- you talked about when you
13 reviewed his hard drive and you saw the video of him by the
14 Lashkar-e-Tayyiba propaganda poster, did you already know
15 what that was?

16 A. I had some idea, but when he said specifically on the
17 stand that's a Lashkar-e-Tayyiba propaganda poster, that was
18 a pretty good confirmation of it.

19 Q. It was confirmation?

20 A. Yeah.

21 Q. And the other -- the communications that you referenced
22 where he was talking about his links with Lashkar-e-Tayyiba,
23 you had reviewed those before he testified?

24 A. Long before he testified, yes. And in my expert report
25 in that case, which was submitted long before he testified,

1 there is a lot of information in there about both Jaish and
2 Lashkar, I believe.

3 Q. And reviewing the other items, the recordings, the
4 video, the items on Mr. Khan's hard drive, you had reviewed
5 that before he testified?

6 A. Yes, up to a year and a half. Yeah, I reviewed these
7 materials in late 2006 and 2007, which was at least a year
8 and a half before Mr. Khan ever testified.

9 Q. So the use that you put to having reviewed all that
10 information on his hard drive and all the other information
11 that you have that you already knew of Lashkar-e-Tayyiba
12 based on your own research, then what role did Mr. Khan's
13 testimony then serve for you?

14 A. As confirmation. It was confirmation, fleshing it
15 out. It was admissions against interest, but things that
16 I already was pretty positive of, because I already had
17 communications of.

18 It was certainly helpful to hear that testimony, but it
19 was just one more piece of the puzzle.

20 Q. So one more piece of the puzzle, but it wasn't your sole
21 basis for your opinion?

22 A. No, no, no. I mean, if you read my expert report --
23 I mean, this is not my expert report. I gave you a copy of
24 my expert report which is dated long before Mr. Khan ever
25 testified, I had ever spoken with Mr. Khan or seen

1 Mr. Khan. I didn't even know what Mr. Khan looked like when
2 I wrote that.

3 And I was pretty certain of his contacts and connections
4 with Lashkar-e-Tayyiba and Jaish-e-Mohammed long before he
5 ever admitted to it on the witness stand.

6 MS. COLLINS: Your Honor, may I just have one
7 second?

8 Unless Your Honor has another area I need to go
9 into, I don't have any more questions.

10 THE COURT: Mr. Martin, do you have anything else?

11 -- -- --

12 RECROSS-EXAMINATION

13 BY MR. MARTIN:

14 Q. Just in two sentences, if you can, what is your opinion
15 about Mr. Khan and Jaish-e-Mohammed and LET? What is the
16 ultimate opinion?

17 A. What his links were to them? That he was attempting to
18 negotiate with them in order to bring over groups of
19 individuals from North America and Europe to receive training
20 at camps run by either Jaish-e-Mohammed or Lashkar-e-Tayyiba
21 with the intention of either bringing those people back to
22 North America or else putting them into another Jihad zone,
23 namely either Afghanistan or Chechnya.

24 Q. That was his intention?

25 A. That was his intention. And he essentially advertised

1 on internet forums saying, If you would like to go through
2 Jihad, if you would like to get training, let me know.

3 MR. MARTIN: All right. No other questions.

4 THE COURT: Mr. Wahid?

5 MR. WAHID: No questions.

6 THE COURT: All right. Thank you very much,
7 Mr. Kohlmann.

8 THE WITNESS: Thank you very much, Your Honor.

9 THE COURT: Based upon what I have heard, I would
10 assume the issue still is the extent to which it would be
11 permissible for him to use the testimony of Mr. Khan at his
12 trial in reaching his opinion? Is that a fair summary of
13 what the issue is that I have to decide?

14 MR. MARTIN: I believe all of the other
15 communications and things that he talked about which are not
16 in evidence.

17 There will be -- I'm not trying to create a false
18 issue here. There will be some evidence of communications
19 between my client and Mr. Khan that is relevant to what he
20 just talked about. But all these other, information about
21 the purposes of what he described he was trying to do seems
22 to me beyond -- there may be a relevancy question, but it's
23 also is he's just doing nothing more than testifying as a law
24 enforcement person as to his conclusion about a critical
25 issue in the case.

1 I think what Mr. Wahid said, I think it is a
2 violation of 702 or the purpose of 702 and also our
3 confrontation rights.

4 THE COURT: All right. Here is what I'm going to
5 have you do. Now that the record has ended, you will file
6 motions. The motions -- today is Wednesday -- will be due
7 the end of business on Monday -- well, Tuesday since Monday
8 is a federal holiday, in which you will specify the testimony
9 that has been presented that you seek to exclude and the
10 grounds for it.

11 The government will file by the end of the day
12 on -- I guess we can separate this because the second trial
13 isn't until later. We ought to deal first with the Ahmed
14 trial.

15 So, Mr. Martin, your deadline is the end of
16 business on Tuesday. The government will respond by the end
17 of business on Thursday, and then, Mr. Martin, if you want to
18 respond, do it by the end of business on Friday.

19 For Mr. Sadequee, his -- you know, it would help --
20 it's going to be the same issue for both. Would it be too
21 burdensome to ask you to meet the same deadline?

22 MR. WAHID: Could I hear that again?

23 THE COURT: End of business on Tuesday, then the
24 government has to respond by the end of business on Thursday,
25 and then if you wanted to have a reply of any kind, it would

1 be by the end of business on Friday.

2 Can you meet that deadline?

3 MR. WAHID: Yes.

4 THE COURT: All right. And what I expect is in the
5 motions to exclude his testimony, pretty specific what you
6 expect based upon what he said to say, and if it's more than
7 one area, because Mr. Martin has said that -- I think what
8 Mr. Martin is saying is that if he expresses the opinion that
9 he was out recruiting people and that he bases that opinion
10 based upon all the communications and what he saw on the
11 website, that he believes that's excluded, I guess because
12 Mr. Khan or Mr. Tsouli is not here, that that's a violation
13 of the confrontation clause.

14 So I want all those arguments. If you don't make
15 them, I am doing to deem them waived. But I want you to say
16 here is specifically what we expect him to say, here is why
17 we think the law doesn't allow it. And do that for each item
18 of his testimony that you seek to exclude.

19 Now, I would give this admonition to the
20 government. One, when this witness testifies, he has to
21 testify pursuant to direct examination questions, and this
22 rambling testimony that was allowed that was in my view
23 unorganized and disjointed will not help me decide this case
24 as I will be deciding the case for Mr. Ahmed, and I promise
25 you a jury will never understand all of this.

1 And this has to be done in a more organized,
2 thoughtful way for any trier of fact to get the evidence
3 that's necessary to reach a just decision.

4 While we are all together, is there anything else
5 we need to discuss today?

6 MR. SAMUEL: Your Honor, we have a bond motion
7 pending. I don't know what the Court's pleasure about when
8 to schedule that or how to schedule it or what to do on
9 that.

10 We would just like to know what the Court's
11 inclination is on that.

12 THE COURT: Has the government responded to the
13 motion?

14 MR. McBURNEY: Yes.

15 THE COURT: Are you going to reply any further to
16 their response?

17 MR. SAMUEL: I can if the Court wants me
18 to. I didn't know if you were just going to set it down for
19 a hearing.

20 You previously indicated you do not want
21 Magistrate Brill to handle it, you wanted it addressed to
22 you. I didn't know if you were just going to schedule it for
23 argument, possible hearing.

24 I can certainly reply. There is nothing in their
25 moving papers that were factually inaccurate, but I will.

1 THE COURT: I mean, is there any reason to have an
2 oral hearing, or can I decide it on the submissions?

3 MR. SAMUEL: I think we would like to have a
4 chance, not this afternoon, but to have a chance to at least
5 argue it to you. I don't think we really have a factual
6 dispute that would require testimony. We emphasize the
7 length of his detention, the conditions of his detention,
8 they have responded with the facts that are unexceptional.

9 So it's really argument as opposed to any factual
10 dispute that's required.

11 THE COURT: My schedule is really awful right now,
12 but we will try to find some time to do that. It will have
13 to be a short hearing because I have got things scheduled all
14 next week already in anticipation of the trial that starts
15 the following Monday.

16 But we will see what we can do. We will get back
17 in touch with you tomorrow.

18 MR. SAMUEL: Thank you, Your Honor.

19 Do you want me to file a reply? Let me relook at
20 their papers.

21 THE COURT: I have got enough paper to keep me busy
22 for a long time, so I'm leaving it up to you to file a
23 reply. But I'm assuming that if there was a reply, it would
24 be something totally new that you had not already presented
25 in your original motion.

1 MR. SAMUEL: Then don't count on it. Thank you.

2 THE COURT: All right. That's the right
3 answer. Thank you.

4 Anything else we need to discuss before we
5 adjourn?

6 MR. McBURNEY: No, sir.

7 THE COURT: Mr. Martin?

8 MR. MARTIN: No, sir.

9 THE COURT: Mr. Samuel, Mr. Wahid?

10 MR. WAHID: No, thank you, Judge.

11 THE COURT: All right. We will be in recess.

12 (Proceedings adjourn at 5:11 p.m.)

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C E R T I F I C A T E

UNITED STATES OF AMERICA :
:
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 254 pages constitute a true transcript of proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 21st day of May, 2009.

/s/ Nicholas A. Marrone

NICHOLAS A. MARRONE, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
Northern District of Georgia